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
August 19 – 20, 2021

MEETING MINUTES

Thursday, August 19, 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
Alejandra Campoverdi
Dev GnanaDev, M.D.
Randy W. Hawkins, M.D., Vice President
James M. Healzer, M.D.
Howard R. Krauss, M.D.
Laurie Rose Lubiano, J.D., Secretary
Asif Mahmood, M.D.
David Ryu
Eserick "TJ" Watkins

Members Absent:
Ryan Brooks
Richard E. Thorp, M.D.
Felix C. Yip, M.D.

Staff Present:
Aaron Bone, Chief of Legislation and Public Affairs
Susan Cady, Associate Governmental Program Analyst
Valerie Caldwell, Associate Governmental Program Analyst
Charlotte Clark, Information Technology Supervisor I
Sean Eichelkraut, Information Technology Manager I
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
Alexandria Schembra, Associate Governmental Program Analyst
Lisa Toof, Staff Services Manager I

Reji Varghese, Deputy Director
Carlos Villatoro, Public Information Officer II
Kerrie Webb, Staff Counsel

Members of the Audience:
Eric Andrist, The Patient Safety League
Rosie Arthursdotter
Marcey Brightwell, Brightwell Strategies
Vanessa Cajina
Gloria Castro, Attorney General's Office
Maria Celerio, Attorney General's Office
Yvonne Choong, California Medical Association
Kim Christensen, Los Angeles Times
Dennis Cuevas-Romero, Physicians for a Healthy California
Matt Davis, Attorney General's Office
Phil Deters, Attorney General's Office
Nataly Diaz, California Primary Care Association
Jack Dolan, Los Angeles Times
Tracy Dominguez
Kimberly Elkin, Law Offices of Nicole Irmer
Virginia Farr
Julianne Fellmeth, University of San Diego
Denard Fobbs, M.D.
Pamela Fobbs, J.D.
Anne Fuqua
Norma Godinez
Lori Govar, IBH Solutions
Lindsay Gullahorn, Capitol Advocacy
Melody Gutierrez, Los Angeles Times
Ashley Harp, Attorney General's Office
Tom Hayashi
Christina Hildebrand, A Voice for Choice
Marian Hollingsworth, The Patient Safety League
Carrie Holmes, Department of Consumer Affairs
Edwin Kendrick, M.D.
Wendy Knecht
Karen Kwok, Attorney General's Office
Khadijah Lang, M.D.
Susan Lauren
Rachelle LeBlanc, Attorney General's Office
Jill Lopez-Rabin, University of California, Davis
Lance Martin, California Medical Association
Sandra Martinez
Michele Monserratt-Ramos, Consumer Watchdog
Ashley N.
Kathleen Nicholls, Health Quality Investigations Unit
Catrina Reyes, California Academy of Family Physicians
Juan Reyes, California State Assembly
Hanna Rhee, Black Patients Matter

Arlene Rhoden
Eric Ryan, Health Quality Investigations Unit
Leanna Shields, Attorney General's Office
Kristie Sepulveda-Burchit, Educate Advocate
Ryan Tacher, Department of Consumer Affairs
Bennie Thompkins
Jacqueline Trager
Cynthia Verbis, Health Quality Investigations Unit
Karolyn Westfall, Attorney General's Office
Shawnda Westly, Westly Consulting
Samantha Young, Kaiser Family Foundation

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 August 19, 2021, at 2:01 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. Lauren spoke of Germany's eugenics program and forced sterilization on female prisoners in California and compared it to medical harm in California and lack of disciplinary action from the Board. Ms. Lauren shared her negative experience with Dr. Berger and her complaint against Dr. Dubrow. Ms. Lauren also commented on adipose tissue removal.

Ms. Rhee thanked the Board for its progress in addressing advocate concerns. Ms. Rhee suggested that an investigation be done at the Attorney General's Office (AGO) due to their large budget and seemingly little work. Ms. Rhee also suggested an investigation be done at the Office of Administrative Hearings (OAH), citing her altered transcripts.

Ms. Martinez requested the Board stop interfering with doctors' ability to prescribe Food and Drug Administration (FDA) approved medications, such as hydroxychloroquine and ivermectin. Ms. Martinez commented that remdesivir is less successful in treating COVID. Ms. Martinez asked the Board to support doctors who honor the Hippocratic oath and retract restrictions on doctors.

Ms. Fuqua shared that she is a chronic pain patient who, like many other patients, is losing access to opioids prescribed for chronic pain. Ms. Fuqua commented that physicians who prescribe opioids for chronic pain are fearful of a Board investigation and asked the Board for an agenda item related to the treatment of intractable pain.

Ms. Hildebrand thanked the Board for holding public advocate meetings and requested that the public advocates lead the discussions. Ms. Hildebrand shared that she asked a staff member of the Board about how much input Board members have in disciplinary action, and that, unless a Board member requests additional information, members do not receive all the documents from a hearing and only review the information given to them from the executive director. Ms. Hildebrand commented on the Board's statement that inappropriate mask

exemptions could lead to discipline and requested that the Board notify everyone as to the standard of care for masks.

Dr. Kendrick commented on creating more equitable care within California hospitals, including medical staff. Dr. Kendrick shared his concern that the lack of equitable care results in patient safety risks and harm. Dr. Kendrick stated that minority surgeons are not able to obtain privileges at certain hospitals and these hospitals are not abiding by medical staff bylaws. Dr. Kendrick informed the Board that there is disproportionate treatment and that workforce diversity needs to improve, saying that he hopes a minority equitable health care project can take place.

Ms. Hollingsworth encouraged Board members to hold a committee meeting on how members can be more receptive to the public. Ms. Hollingsworth commented that advocates have experienced medical harm and go to the Board for help and accountability, but instead are dismissed. Ms. Hollingsworth explained that she is not against doctors, she wants as many good doctors as we can get, and that she wants the Board to have her back if anything goes wrong. Ms. Hollingsworth suggested the Board reestablish trust if it is concerned about its integrity and reputation.

Ms. Sepulveda-Burchit commented on the Board's statement that inappropriate mask exemptions could lead to physician discipline and spoke of children with disabilities and medical issues that prevent the use of masks. Ms. Sepulveda-Burchit requested the standard of care for wearing masks.

Mr. Andrist commented that he warned Ms. Lawson that the public advocate meeting would not go well if the topics were not what the advocates wanted. Mr. Andrist stated that the public advocate meetings were designed to open communication between the Board and the public, and that the topics from the last meeting could have waited until the quarterly Board meeting. Mr. Andrist spoke of the proposed confidential letter of advice, saying that someone would need to monitor Mr. Prasifka to make sure the letters were being implemented appropriately. Mr. Andrist stated that it is not the Board's job to protect doctors, but rather to protect the people in California.

Ms. Arthursdotter stated that she has previously requested an agenda item on intractable pain but instead an agenda item was added for substance abuse and medically assisted therapy. Ms. Arthursdotter spoke of the 2016 Centers for Disease Control and Prevention (CDC) guidelines, saying they were created for new patients going on opioids and not legacy or transfer patients.

Dr. Fobbs spoke of the ongoing problem with disparate treatment of minority doctors at the hospital level as well as unjustified outcomes of peer reviews. Dr. Fobbs commented that the Board has good intentions when reviewing cases but may have difficulty getting accurate information. Dr. Fobbs stated that it would be in the interest of protecting patients if the Board had an active part in reviewing what happens in the hospital peer review process.

Dr. Lang commented that she would appreciate any information the Board can give regarding religious waivers for vaccinations. Dr. Lang shared her concern in establishing transparency in the hospital peer review and credentialing processes, saying there is a pattern for African

American physicians but cannot review information due to HIPAA laws. Dr. Lang suggested a policy that would de-personalize identifying information for physicians applying for credentials in California hospitals, including gender, ethnicity, and age.

Ms. Farr commented that patients who have experienced trauma are told that they are perceiving their experiences. Ms. Farr requested Board members be trauma-informed so that the same thing does not happen to others.

Ms. Godinez spoke about the Board's statement that inappropriate mask exemptions could lead to physician discipline, saying that physicians write the exemptions because they have seen the patients. Ms. Godinez commented that there are psychological effects on kids wearing masks. Ms. Godinez asked the Board to not go after doctors that give medical exemptions.

Mr. Hayashi commented on a 2018 report from Human Rights Watch about the treatment of chronic pain patients in the United States being identical to that of victims of police torture. Mr. Hayashi also commented on incidences of suicide in chronic pain patients who were refused opioid treatments. Mr. Hayashi stated that the CDC guidelines were intended for primary care physicians treating new patients and not pain management professionals treating legacy patients.

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 in the Board minutes.

Dr. Krauss moved to approve the February 4 – 5, 2021 meeting minutes/S: Dr. GnanaDev

Mr. Watkins commented that he did not have enough time to review the minutes since he received the Board meeting material 48 hours prior to the meeting. Mr. Watkins commented that he is not always confident in the minutes but since there is footage then it is okay.

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented that the Board should use the closed captioning to get a shorthand version of the speakers' comments. Ms. Arthursdotter also commented that she has previously brought up several items, including communications, a task force for controlled substances, medical records, and care for intractable pain, that have not been addressed.

Ms. Farr commented that the minutes omit her statements about her medical records being false and the number of medical visits it took for her to be pain free.

Ms. Rhee commented that the minutes omit that she represents Black Patients Matter.

Ms. Lauren commented that at the last stakeholders meeting she spoke about a massage therapist which was omitted from the minutes. Ms. Lauren stated that her comments were sent as an email to Board members.

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

Motion carried 8-0-2 (Dr. Healzer and Mr. Watkins abstained)

Agenda Item 4 Approval of Minutes from the June 1, 2021, Special Board Meeting

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

Ms. Lubiano requested an edit of her comments on page BRD 4 – 9 about Board members being vetted.

Agenda Item 5 Approval of Minutes from the June 24, 2021, Interim Board Meeting

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

Dr. Krauss commented that the Vice President and Secretary officers need to be updated on the first page.

Dr. Krauss moved to approve the June 24, 2021, meeting minutes/S: Dr. GnanaDev

Ms. Lawson asked for comments from the public.

Mr. Andrist commented that there seems to be a lot of problems with the minutes and asked who was responsible for them.

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

Motion carried 6-0-4 (Ms. Campoverdi, Dr. Healzer, Ms. Lubiano and Mr. Watkins abstained)

Agenda Item 6 President's Report, including notable accomplishments and priorities

Ms. Lawson introduced the newest member of the Board, Dr. Healzer. Ms. Lawson gave a brief background of Dr. Healzer and performed the swearing-in ceremony. Ms. Lawson asked Dr. Healzer if he would like to say a few words.

Dr. Healzer replied that he is a practicing anesthesiologist at Kaiser Medical Center in Santa Clara and that he has an interest in peer review.

Ms. Lawson gave an update, saying the July 29th public stakeholder meeting is available to view on the Board's website, along with the Board's July 2021 newsletter. Ms. Lawson reminded applicants and licensees that, pursuant to AB 3330, the mandatory CURES fee increased from six dollars to 11 dollars as of July 1st. Lastly, Ms. Lawson commented that the

Board is receiving an increase in calls from licensees stating that they are receiving calls from scammers claiming to be Board staff.

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

Ms. Rhee commented that it is nice to have a representative from Kaiser, but she is concerned about their algorithm to determine preventative treatment for African American patients.

Mr. Andrist commented that it is ironic that a doctor from Kaiser would be appointed to the Board when Kaiser requires all its patients to sign away their sixth amendment right to a jury trial by signing arbitration agreements.

Agenda Item 7 Board Member Communications with Interested Parties

Dr. GnanaDev commented that he is involved with health policy, but he does not discuss Board issues.

Ms. Lubiano commented that she received correspondence from an individual who filed a complaint and that she referred the information to Board staff.

Ms. Lawson stated that she has had conversations with legislative staff, legislators, patient advocates, and other advocates. Ms. Lawson added that she also receives email correspondence, which she forwards to Board staff for an appropriate response.

Dr. Mahmood commented that he is involved in advocacy work, but he does not discuss Board issues.

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented that she has previously requested to speak to Ms. Lawson only to have her requests sent back to Board staff.

Ms. Rhee commented that it is unacceptable disclosure for Board members to state in general terms that they spoke to advocates. Ms. Rhee continued, saying that disclosure means indicating specifically who you spoke to and what became of it.

Agenda Item 8 Executive Management Reports

Mr. Prasifka began by giving administrative updates, saying Board staff had meetings with Ms. Lawson and Dr. Hawkins to discuss ongoing projects and Board meeting agendas, conducted new Board member orientations, had continuing interactions with the AGO and Health Quality Investigation Unit (HQIU), participated in conference calls regarding the implementation of the licensed physicians from the Mexico Pilot Program, and met with legislative staff and advocates regarding the Board’s pending sunset review.

Mr. Prasifka gave a staffing update, noting that the Board has eight new employees in Administrative Services, Licensing, and Enforcement. Mr. Prasifka noted that the Board is dealing with fluidity in staff due to COVID and continues to have a significant number of staff teleworking.

Mr. Prasifka gave an Information Systems Branch (ISB) update, commenting on the Board's redesign of its website, the complaint tracking system, the mid-October scheduled launch of the redesigned physician survey, the upcoming print-yourself pocket license cards, the Direct Online Certification Submission (DOCS) portal, the ongoing online complaint form redesign, and the WebEx training for Board experts.

Mr. Prasifka gave an enforcement update, commenting on the Board's expert reviewer program, the continued work on reducing the number of days to initiate a complaint in the Central Complaint Unit (CCU), and the work towards a quality compliance program. Mr. Prasifka reviewed the enforcement metrics, commenting that COVID has been disruptive not only from the complainant point of view, but also in terms of healthcare delivery. Reviewing the average days to complete investigations in the Complaint Investigations Office (CIO), Mr. Prasifka noted that the increase in days can be attributed to 2019 vaccine exemption cases that present time-consuming challenges, such as patients not giving consent to access medical records and subpoena enforcement. Mr. Prasifka commented on the average HQIU investigation days by case type, noting that the unlicensed activity type increased from 351 days in fiscal year 2016/2017 to 659 days in fiscal year 2020/2021. Mr. Prasifka reviewed the pending enforcement caseload summary, saying there has been a 16 percent reduction since November 2020.

Mr. Prasifka gave an update on the Licensing Unit, saying they are very busy with a high number of applications. Mr. Prasifka noted that the Licensing Unit has been able to keep the processing time from receipt of the application to the initial review around 30 days for both Postgraduate Training Licenses (PTL) applications and Physician's and Surgeon's (P&S) License applications. Mr. Prasifka also noted that the Board was able to prioritize P&S License applications for residents completing training on June 30, 2021 and was able to transition PTLs to P&S Licenses in three business days.

Mr. Prasifka commented on the Mexico Pilot Program, saying two licenses have been issued and the Board is waiting to issue the other licenses at the request of the applicants. Lastly, Mr. Prasifka commented on the use of the DOCS portal, saying it has been very successful and there continues to be an uptick in use.

Dr. Krauss commented that he read the Los Angeles Times article that stated the Board has 10,000 complaints and a few hundred action items and that the Board may be shooting itself in the foot by the misuse of the word *complaint*, and that there may be a semantic and nomenclature problem when the Board receives complaints that are not under its jurisdiction but are still logged as complaints. Dr. Krauss suggested logging such instances as inquiries. Dr. Krauss also commented on the Board receiving numerous complaints about a same instance and that it should be listed as just one complaint. Dr. Krauss noted that these changes can help the public and the press to better judge what percentage of complaints are actionable items.

Mr. Watkins stated that he is concerned with Mr. Prasifka's report of being busy, saying he gets a sense that Mr. Prasifka is overwhelmed. Mr. Watkins commented on not getting the link to the Board meeting materials until 48 hours before the meeting and not being able to review the material with the level of attention that he would like.

Ms. Lawson asked Mr. Watkins what he meant by receiving the material 48 hours in advance since she received a hard copy the week prior.

Mr. Watkins replied that the material was not posted online until 48 hours ago. Mr. Watkins continued, saying he abstained from voting on the minutes because he did not have enough time to review them. Mr. Watkins also commented that complaints are decreasing while the rate at which the Board is writing public reprimands will be the highest number of any executive officer that he could find, and he does not want that to be the new burial ground for cases. Mr. Watkins asked Mr. Prasifka to explain this.

Mr. Prasifka replied that he does not see an explosive increase in numbers, and every case is reviewed on its own merits with a view to resolving it in a way that serves the public interest. Mr. Prasifka commented that simply looking at the number of sanctions tells very little about the methodology that is brought to every case, and that the Board is devoting the maximum number of resources to the most serious cases and cases not deemed as serious are resolved efficiently and effectively.

Mr. Watkins responded that if Mr. Prasifka does not think a 44 percent year-on-year increase is significant, then he does not understand the correlation between numbers. Mr. Watkins explained that if the number of complaints decreased then the number of public reprimands should have also decreased.

Mr. Prasifka commented that when Mr. Watkins looks at the 40 percent increase, he is ignoring the two previous years in which there were 133 and 135 cases, and this is more of a return to trends that had previously existed.

Mr. Watkins stated that he has seven years of data and can take any six-month period to get a trend and indication for what is happening. Mr. Watkins stated that this is outside of any trend that has ever happened before and is concerned with the low level of trust and competency of the Board.

Dr. Mahmood commented that Mr. Watkins is giving him the impression that the Board's executives are not trying to protect the public and are biased toward the profession and stated that the public reprimands do not prove anything. Dr. Mahmood suggested picking random cases to review to make sure the discipline was fair, there was no bias, and ensure the public was protected. Dr. Mahmood commented that he takes his panel responsibilities seriously and if the disciplinary guidelines are the problem, that should be corrected.

Dr. Krauss declared his conflict of interest, saying he is a physician who has served on the Board for eight years and is concerned with the health and well-being of Californians. Dr. Krauss stated that in the eight years on this Board, he has not encountered another Board member who has been so negative about the Board's processes as Mr. Watkins, and that the executive director and Board staff should be supported. Dr. Krauss commented that there are

flaws, problems, and many things out of the Board's control and hearing repeated criticism could become destructive in leading to a positive outcome for the Board. Dr. Krauss encouraged Board members to bring Mr. Watkins around to working productively towards Board processes.

Ms. Webb reminded Board members of the limitations of the Open Meeting Act with discussions outside of open meetings.

Replying to Dr. Mahmood's suggestion, Mr. Watkins stated that he has identified the problem as the system's operations and the statistics show the Board is lenient toward doctors. Replying to Dr. Krauss, Mr. Watkins stated that it is a misconception that he wants to bring the Board down and that he does not need to be brought around. Mr. Watkins commented that his criticism of the Board's processes are the same criticisms from public and patient advocates, which the Board has ignored. Mr. Watkins continued, saying he is not point fingers, but rather shedding light on a system that has been operating in a particular way, and that this Board has some of the lowest standards of all the healing arts boards in the Department of Consumer Affairs (DCA).

Ms. Campoverdi requested regular reporting on the criteria used to close cases, including how and why cases are closed, saying that would give clarity and be helpful.

Dr. GnanaDev asked how the Board can maintain its financial stability.

Mr. Prasifka replied that the 80-dollar increase that is currently in SB 806 is not adequate and does not put the Board on a sustainable path. Mr. Prasifka commented that the loan from the Automotive Repair Board will keep the Board afloat through the end of the fiscal year, and the savings from operating efficiencies have had a marginal effect.

Dr. GnanaDev commented that budgets usually have an increase in revenue and a decrease in costs, and most of the Board's costs are not in our control.

Mr. Prasifka commented that the AGO costs are activity-driven, and the Board has a significant caseload. Mr. Prasifka continued, saying the Board is trying to reduce the timelines, which means more activity in the short term, but if the Board continues to prioritize resolving cases efficiently and effectively then that should bear some cost savings in the medium term.

Dr. Healzer asked how much of a fee increase would be required to return to a break-even basis.

Mr. Prasifka replied that it would be the amount recommended in the Board's fee report.

Mr. Bone added that it is roughly a 50 percent increase for the Board's various licensees, which would be the first time in fifteen years for a fee increase.

Ms. Lubiano commented that in addition to upholding the mission, it is also the Board members' duty to provide oversight and give guidance on how to improve the Board. Ms. Lubiano commented that she also did not receive the Board meeting material link on time and is sure Board staff are looking into that. Ms. Lubiano stated that she is happy to be involved in

discussions on helping the Board improve. Ms. Lubiano spoke of data, trends, and the number of public reprimands, and asked for more information about how cases are closed.

Ms. Lawson commented that the Board meeting material was delayed due to the need for it to be formatted for Americans with Disabilities Act (ADA) purposes, and that she will make sure it does not happen in the future. Ms. Lawson commented that it is worth understanding the number of public reprimands and the data behind the numbers and directed Board staff to have that information at the next Board meeting.

Mr. Watkins thanked Ms. Lawson, saying all he wants is an exploration into those numbers. Mr. Watkins requested an email in the future if Board staff are having difficulty getting the meeting material out on time. Mr. Watkins replied to Dr. Healzer's question, saying the increase was for 367 dollars over two years and $783.50 was the absolute minimum for the Board to survive.

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented on patient records being copied and pasted from a template rather than having a clinical record. Ms. Arthursdotter stated that public reprimand numbers look funny because these patient records have to be fared through to get the actual clinical facts.

Ms. Rhee thanked Mr. Prasifka and Mr. Watkins for their work in the Board. Ms. Rhee suggested the Board have a mediation program to reestablish physician-patient relationships and to help bring closure to patients.

Ms. Lauren commented that she is not a number, but a person, and spoke of her case against Dr. Berger. Ms. Lauren commented that the Board could not have been more lenient or biased in her case and stated that California is not protecting patients.

Ms. Hollingsworth agreed with Mr. Watkins regarding the increase in public reprimands and listed cases where the doctor received a reprimand. Ms. Hollingsworth stated that long-time physician Board members are more concerned about staying on their pedestal than hearing how they can improve.

Agenda Item 9 Update on Sunset Review and Discussion and Possible Action on SB 806

Ms. Lawson began by reviewing the sunset review process and a brief timeline of what has happened since fall of 2020. Ms. Lawson gave an update on what to expect next, saying the Board expects SB 806 to be approved by the Assembly Appropriations Committee by August 27th, then it will move to the assembly floor for consideration by the entire assembly, and the bill must be approved by the full assembly and the full senate by the time the legislature adjourns on September 10th. Ms. Lawson explained the format of discussing this item, saying Mr. Bone will present the staff report, Board members can ask clarifying questions, members of the public can comment, and then discussion will be held for each topic or theme.

Mr. Prasifka commented on items of extreme importance to the Board, including the fee increase, cost recovery, and a public member majority.

Mr. Bone reviewed the Board's support if amended position from the June 1st meeting to include a public member majority, an enforcement monitor, the fee increase, and extending the Board for four more years. Mr. Bone stated that the Board continues to advocate for the additional statutory changes requested in the Sunset Review Report. Mr. Bone noted the amendments from the bill as approved on June 3rd by the Senate, which include added language regarding the role of the enforcement monitor, requiring license applications to be submitted online, removing the requirement for paper notices to physicians who are approaching their renewal date, postgraduate training requirements to allow an individual to apply for a P&S License upon completion of one year of postgraduate training and receive 36 months of credit in their program, and give the Board the authority to allow the executive director to issue a confidential letter of advice. Mr. Bone also noted the items not included in the bill that the Board had been seeking, including the increased licensing fee amount, the composition of the Board, and extending the Board's authority for four years rather than two years.

Mr. Bone commented that SB 806 includes intent language for the postgraduate training program and would need to be amended further before the Board could implement any such policy, which the Board could do during this meeting. Mr. Bone stated if the Board maintains its support if amended position, staff would be authorized to continue to work on the priorities of the Board for the remainder of the year, and that if the bill does not get amended as requested by the Board, he would still recommend that the Board direct staff to request the governor to sign the bill into law so the Board will not sunset.

Mr. Watkins stated that during the June 1st meeting at the three-hour mark, the Board established an opposed position because the bill did not have anything the Board wanted. Mr. Watkins continued, saying the Board had to take a support unless amended position. Mr. Watkins commented on Mr. Prasifka giving the Board's support unless amended position at the committee hearing, saying if the Board wants to negotiate the bill, the committee can then assume the Board supported the bill. Mr. Watkins asked how much influence is coming from the California Medical Association (CMA). Mr. Watkins stated the bill does nothing to impact the future of the Board in a positive way and added that this conversation will continue to happen.

Ms. Lawson commented that the Board exists because of the legislature and that this is not the Board's process, but instead the Board is one of many stakeholders who participate in this process. Ms. Lawson added that Board members and staff have been strong and strident advocates for the Board's priorities and the legislature knows what the Board's position is on all the issues. Ms. Lawson stated that the Board's Sunset Review Report outlines ways that the Board can improve and enhance its effectiveness and that the Board is not being listened to on all points. Ms. Lawson added that the Board is a creature of statute, and its continued existence depends on the senate and assembly extending the Board's existence.

Mr. Watkins thanked Ms. Lawson for the explanation.

Dr. GnanaDev commented that there are multiple negotiations done on the last day and there are also multiple players involved. Dr. GnanaDev stated he is fairly happy with what the Board is getting, aside from the finances, but he has no doubt it will be solved.

Dr. Hawkins asked Ms. Lawson if there was anything from her interactions with Senator Roth and Assemblymember Low, Board staff, and the Board's toolkit that could help move the Board along in this process.

Ms. Lawson responded that she and Board staff have had robust conversations with legislators about the Board's need for additional funding and these conversations give a good understanding of the types of things they are looking for as far as information in the Board's Sunset Review Report. Ms. Lawson added that the Board's priorities and positions are always top of mind and Board staff are providing legislators and their staff information and ideas that will advance the Board's priorities.

Ms. Lubiano asked when the two-year extension would begin. Ms. Lubiano also asked what the chances are of the Board being able to get the four-year extension, saying that by the time the Board makes progress, it will have to prepare for sunset again.

Mr. Bone replied that the chances of receiving a four-year extension are not good, saying the comments and scrutiny that the legislature receives all year round will try to be addressed and reviewed with the changes implemented in this two-year sunset extension. Mr. Bone stated that the two-year extension will begin January 1, 2022.

Ms. Lubiano asked who would develop the framework and model for cost recovery and who would ensure the amounts are collected.

Mr. Bone replied that cost recovery could be initiated either through an administrative law judge (ALJ) or through a stipulated settlement.

Ms. Webb commented that not all costs are collected, but that could come up when a physician seeks to have their license reinstated. Ms. Webb commented that it is an effective tool in negotiations that the Board has used in the past.

Dr. Krauss asked if any other boards under DCA have cost recovery and if it is effective for them.

Mr. Bone replied that cost recovery is common, and the Medical Board is the only board that does not have it. Mr. Bone commented that collection rates are relatively small compared to the actual costs that get put into the investigation and prosecution process.

Dr. GnanaDev commented that the biggest benefit from cost recovery is that it will prohibit the doctors' attorneys from dragging a case on. Dr. GnanaDev asked why the legislature only wants to extend the Board for two years.

Mr. Bone responded that some boards are only getting a one-year extension. Mr. Bone also commented that because of COVID, the legislature was unable to review all the boards last year, so much of the work was pushed to this year.

Dr. Krauss asked if there is a chance this sunset review could be pushed out until next year, or if Mr. Bone is confident that there will be a resolution this year.

Mr. Bone responded that he cannot imagine a scenario where the bill would be put off until next year. Mr. Bone added that SB 806 not only includes the Medical Board, but also the Osteopathic Medical Board, the Physician Assistant Board, and the Podiatric Medical Board.

Ms. Campoverdi asked about the confidential letter of advice, saying the bill seemed unclear on the implementation and oversight.

Mr. Bone replied that there is not a lot of detail in the bill because the legislature is delegating authority to the Board to establish the parameters for this program. Mr. Bone reviewed section 14 of the bill which outlines the confidential letter of advice.

Ms. Campoverdi asked what the bill language meant by stating the letter shall be purged after three years. Ms. Campoverdi also asked if this would be part of the enforcement monitor's report.

Ms. Lawson commented that section 14 of the bill adds Business and Professions Code (BPC) 2227.3(d) that requires the Board to go through the full formal rulemaking process to establish this program, and that is how the Board will spell out exactly what the program looks like.

Mr. Prasifka commented that there are many other medical boards in the United States that have this program. Mr. Prasifka added that these letters would be used for less serious matters, saying that less serious cases need to be resolved on an expedited basis. Mr. Prasifka also commented that under the current system, there are considerable expenses involved with accusations, investigations, and subpoenas, which may only result in one simple departure where the Board cannot do anything. Mr. Prasifka stated that this is about having an alternative tool which would need to be used in a responsible manner and added that every disciplinary sanction has the potential to be abused.

Mr. Watkins commented on the concerns patient advocates have with trusting the Board and wanted Mr. Prasifka to instill confidence and trust that the confidential letter of advice would be used responsibly.

Ms. Lawson stated that the confidential letter of advice was the Board's idea and was in the Sunset Review Report that Board members approved in November 2020. Ms. Lawson commented that she would like to hear from the public so that Board members can think through whether they want to change their position. Ms. Lawson reiterated that the rulemaking process will allow the Board to decide what the program would look like and that the language in the bill just allows the Board to have this tool.

Ms. Rhee commented that she is grateful for Mr. Prasifka. Ms. Rhee stated that in her case, her license was revoked as retaliation, and spoke of the need to resolve complaints informally.

Ms. Arthursdotter commented on the confidential letter of advice, chronic pain patients not filing complaints, and reviewing education courses to make sure they are diverse and not revenue-generating schemes.

Ms. Hollingsworth commented that the Board having total control over the confidential letter of advice is alarming and added that Mr. Prasifka could use the letter for egregious cases without anyone knowing. Ms. Hollingsworth added that the letters the Board sends to doctors are not seen as serious or threatening. Ms. Hollingsworth encouraged the Board to take the confidential letter of advice out of SB 806 or make a change so the public is aware of the letters sent.

Ms. Westly commented that the confidential letter of advice should be struck from SB 806, saying it would hinder transparency and accountability. Ms. Westly suggested the Board lobby for the full fee increase that it requested. Ms. Westly also commented that the CMA will try to strip cost recovery from the bill and the Board should lobby for cost recovery, as well.

Ms. Reyes urged the Board to support amendments to SB 806 that would include language from AB 1156 regarding postgraduate training. Ms. Reyes added that prior approval would be needed from a program director for residents to moonlight. Ms. Reyes commented that there is no data of the frequency of residents leaving their program after 12 months and that the real problems need to be addressed rather than creating a licensing structure based on perceived or hypothetical problems.

Ms. Dominguez stated that she does not support a confidential letter of advice and added that there is no room for confidentiality when it comes to the standard of care.

Ms. Diaz commented that the California Primary Care Association (CPCA) is in support of AB 1156 and that the language in SB 806 does not address the current limitations of the PTL. Ms. Diaz also commented that CPCA supports efforts to include similar language in SB 806 as a vehicle to remedy the access to care concerns. Ms. Diaz added that residents must obtain program director approval to moonlight.

Ms. Monserratt-Ramos commented that consumers are against any type of confidential letter, saying it will provide less transparency. Ms. Monserratt-Ramos stated the current legislation needs to be amended to specify that the confidential letter of advice cannot be used for standard of care violations except for cases where the statute has run out. Ms. Monserratt-Ramos also commented that the letters should not be purged after three years.

Ms. Lauren agreed with prior commenters on the confidential letter of advice and added that it is good for doctors but not for patient safety. Ms. Lauren commented that electronic records should be co-authored by the patients. Ms. Lauren requested to have the public member majority added back to the bill and that those members should be vetted for conflicts of interest.

Ms. Hildebrand agreed with prior commenters on the confidential letter of advice and added that the Board has issues with trust and transparency. Ms. Hildebrand took issue with the Board being able to decide which cases are important.

Mr. Cuevas-Romero stated that the CMA remains opposed unless amended to SB 806 due to the unresolved issues related to the PTL. Mr. Cuevas-Romero commented that a coalition is asking the legislature and the Board to consider language from AB 1156 to be placed in SB 806. Mr. Cuevas-Romero added that CMA supports the enforcement monitor but would like more details.

Mr. Andrist commented that the CMA represents less than one third of California doctors. Mr. Andrist asked who would monitor Mr. Prasifka when he issues confidential letters of advice and added that Mr. Prasifka is set on saving money to the detriment of patient safety. Mr. Andrist stated that the reason the diversion program failed was because it was confidential and bartering occurred.

Ms. Lawson restated the current support if amended position and reviewed the topics for discussion, including the confidential letter of advice, PTL, the fee increase, cost recovery, extending the Board's term by four years, and having a public member majority.

Mr. Bone commented that he did not hear any dissenting positions on extending the Board's term to four years, the fee increase, and the composition of the Board, and that the positions will be maintained for those issues. Mr. Bone added that there were many comments regarding the confidential letter of advice and PTL.

Ms. Lawson began with the confidential letter of advice and asked if any Board members thought the position should be changed.

Dr. Mahmood asked what the idea was behind the confidential letter of advice and if it was necessary for the letter to be confidential. Dr. Mahmood suggested considering making it more transparent.

Dr. Krauss asked Mr. Prasifka to reiterate the merits of having the confidential letter as a tool.

Mr. Ryu asked Mr. Prasifka to share the initial intent versus what it is now.

Mr. Prasifka replied that there is no change in the intent and explained that it is not accurate to look at the regulation and management of a complaint system from an end-product disciplinary point of view. Mr. Prasifka further explained that some reports claim that issuing more sanctions means the board is doing a better job than a board that issues less sanctions. Mr. Prasifka spoke on upstream regulation, saying problems should be identified before they result in a fitness to practice issue, which results in a culture of open disclosure and continuous improvement. Mr. Prasifka commented on an advocate's statement about the lack of transparency with confidential letters and noted that is a good point. Mr. Prasifka stated that there has to be transparency and accountability, therefore there should be reporting to give the public information about how the letters are being used.

Dr. Krauss asked what the level of Board oversight would be, or if the letters would be hidden from the Board.

Mr. Prasifka stated that he has no desire to hide anything and welcomes any type of system where the Board would have oversight.

Ms. Lawson commented that having the author of SB 806 add guardrails to specific items would be a productive conversation to have.

Dr. Krauss agreed with Ms. Lawson and added that this is a valuable tool that should be retained.

Mr. Watkins commented that he would like to move away from the letter, saying the public does not want it. Mr. Watkins commented that the Board systematically favors doctors, and this letter would cause people's perception to be more of the same.

Dr. GnanaDev gave a counterpoint that the letter could prevent a doctor who made a simple mistake from being put on probation for three years. Dr. GnanaDev added that the letter allows Board staff to concentrate on more serious offenses.

Mr. Ryu commented that as a new Board member, he was unaware of the trust issues. Mr. Ryu stated that after attending Board meetings and serving on a panel, he has learned there is a big difference between perception and reality. Mr. Ryu spoke of the limitations of the Board and having to work within the boundaries of legislation. Mr. Ryu commented that the word *confidential* may be scaring people. Mr. Ryu stated that this could be a tool that would help the Board become more efficient in moving through the backlog of cases and addressing the more important cases and suggested limitations be put on using the letter.

Ms. Lawson asked if the Board would like to modify their position such that the confidential letter of advice would only be used for minor violations.

Mr. Ryu stated that he would go further to say minor violations that do not include death or any major issue.

Ms. Campoverdi commented that transparency is the biggest goal for the Board currently and that it feels like the Board is moving in the wrong direction. Ms. Campoverdi stated that if the Board is going to support this letter, then the bill should be amended to ensure it does not include standard of care cases.

Mr. Watkins spoke of the public's mistrust of the Board and asked if the letter would be used on the physicians who were disciplined or on the cases that have been dismissed. Mr. Watkins stated that the executive director will have no oversight and the Board will not be able to manage the process.

Ms. Lawson commented that the Board should first decide if it wants to change its position, and then discuss any changes to be made.

Dr. GnanaDev asked why the Board is trying to come up with the rules now since this will go through the rulemaking process.

Ms. Lawson asked for a motion on the confidential letter of advice.

Dr. Krauss moved to maintain the current position on the confidential letter of advice/S: Dr. GnanaDev

Ms. Campoverdi asked why the Board could not adjust the language to make clear that the intent is to only use the letter for minor administrative disciplinary matters.

Ms. Lawson commented that the Board could request the word *minor* be added into the legislation, but to create a list and go through the details of when the letter could be used would be a very lengthy discussion and will be done during the rulemaking. Ms. Lawson added that it would be useful if the Board provides direction to the legislature as to what would go into the statute for guardrails.

Dr. GnanaDev stated that if the maker of the motion wants to amend the motion by adding the word *minor,* then he would be fine seconding that.

Dr. Krauss stated that he is fine with that, as well.

Dr. Mahmood commented that the Board needs to reassure the public that the Board will ensure the letter is only used for minor disciplinary matters, and the Board should consider what minor cases are.

Mr. Watkins commented that listening to the public would be the best guidance, and it is important to note that the public is uncomfortable with this letter and feels it protects doctors.

Ms. Lawson asked Mr. Watkins if his position is to oppose the motion.

Mr. Watkins confirmed that is his position.

Mr. Ryu commented on amending the language to include the word *minor* and trust that the Board will later define the use of the letter.

Dr. Mahmood commented that the public opinion should be respected when referring to minor cases and not just use the Board's medical experts.

Ms. Lubiano commented that the language should also state that the letters shall not be used where there is a concern related to the licensee's fitness to practice.

Ms. Lawson asked the maker of the motion and the seconder if they would accept these amendments. Ms. Lawson restated that the Board would ask the legislature to amend SB 806 so that the confidential letters of advice are only available for minor violations that are not related to fitness to practice.

Dr. Krauss moved to* amend SB 806 to provide the confidential letters of advice are only available for minor violations that are not related to fitness to practice*/S: Dr. GnanaDev

Ms. Lawson asked Mr. Watkins if he still opposes this motion with the amendments.

Mr. Watkins stated that he opposes the motion because it is not what the public wants.

Dr. Mahmood commented that the Board needs to have public reassurance since the major opposition is coming from the public. Dr. Mahmood stated that the changes are coming from the Board and there will still be public mistrust.

Ms. Lawson commented that the Board is commenting on legislation and that the reassurances cannot be added beyond the fact that the legislation itself requires a robust process for the rulemaking. Ms. Lawson added that she feels having this additional tool available would be best for Californians.

Mr. Bone restated the motion of amending SB 806 to limit the confidential letter of advice to minor violations that are unrelated to fitness to practice.

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

Motion carried 7-2-0 (Support if amended; Dr. Mahmood and Mr. Watkins opposed; Mr. Brooks, Ms. Campoverdi, Dr. Thorp, and Dr. Yip absent)

Mr. Bone reviewed the Board's current position on PTL, saying the position has not substantively changed, and noted that the Board instituted the 36-month postgraduate training requirement along with the creation of the PTL as an added component. Mr. Bone commented that the Board has made statements in the past expressing desire to address issues heard from the physician community.

Mr. Ryu asked if the current position is that an individual needs 36 continuous months to get the PTL.

Mr. Bone replied that it is 36 months of approved postgraduate training, with 24 of those months being continuous in the same program. Mr. Bone stated that is a key eligibility requirement to receive a P&S License.

Ms. Lawson explained that the PTL is issued to those in a postgraduate training program, and then after meeting a certain threshold, an individual can be issued a P&S License.

Mr. Bone added that before the PTL was implemented, the law stated that a United States or Canadian medical school graduate could be eligible for licensure with as little as 12 months of postgraduate training, and 24 months of postgraduate training for international medical school graduates. Mr. Bone continued, saying the legislature agreed with the Board that the 12 and 24-month requirement was inappropriate, and what was appropriate was for an applicant to complete 36 months of residency, which is the shortest amount of time for a residency program. Mr. Bone commented that as a result, more medical schools were approved. Mr. Bone stated that some in the physician community argue that the Board should maintain the PTL but move back the timeframes to 12 and 24 months.

Dr. Hawkins moved to maintain the current position on PTL/S: Dr. Krauss

Dr. GnanaDev commented that there is a huge problem with having to finish three years before individuals can get a P&S License since it takes months to get a full license. Dr.

GnanaDev commented that he feels a 12 and 24-month requirement, while still finishing the 36-month program, is a better option.

Dr. Krauss asked if the Board is able to get ahead of the application process for licensure and staff privileges so that the day of residency completion, the privileges are there.

Dr. Hawkins had the same question.

Dr. GnanaDev replied that it is not possible for hospital privileges since so much is required.

Dr. Healzer added that credentialing is still a very slow process.

Ms. Lawson asked Dr. GnanaDev what the number of physicians are that have their PTL and are waiting for their full license after 36 months.

Dr. GnanaDev replied that he did not have the numbers, but California graduates about a thousand doctors from residency programs and almost all of them will have the same problem.

Ms. Lawson commented that that same problem will still exist under the proposal that the physician groups have unless the training requirement length is rolled back, which she does not support.

Dr. GnanaDev commented that, instead of 36 months, 30 months will solve many of the problems since individuals would be able to get hospital privileges on July 1st. Dr. GnanaDev added that the program director would still have to attest that the individual will complete 36 months. Dr. GnanaDev also commented that a better solution is to cut the training requirement down to 30 months.

Mr. Bone asked to clarify the motion, asking if Dr. Hawkins' motion is to reject the approach in the bill regarding 36 months.

Dr. Hawkins responded that the Board would not go back to 12 and 24 months and that the PTL should remain as it is. Dr. Hawkins commented that Dr. GnanaDev has reminded him of some important issues, such as moonlighting.

Mr. Bone reiterated that Dr. Hawkins feels the licensing structure as it exists right now is appropriate.

Dr. Hawkins confirmed.

Mr. Ryu asked if there was an exception for 24 continuous months if an individual had to take a leave of absence.

Mr. Bone replied that current law requires 36 calendar months and that the bill would allow for 36 months of credit to resolve the leave issue.

Ms. Lawson commented that the Application Review and Special Programs Committee adopted a policy to allow for the 36 months of credit provision.

Mr. Bone commented that the language in the bill would codify that, and that the other portion of the bill would allow PTL holders to sign any forms that a physician and surgeon could sign. Mr. Bone added that the bill also grants authority to the Board to grant a P&S License to an applicant who demonstrates substantial compliance with this section.

Dr. Krauss requested to revisit Dr. GnanaDev's concerns, saying if a thousand physicians from residency programs cannot have hospital privileges on July 1st, they may seek employment in other states. Dr. Krauss asked if there was any way the Board could smooth the transition for the three-year residency completers to not have to wait two to three months to have hospital privileges.

Ms. Lawson commented that this concern should be resolved by a process or administrative improvement at hospitals rather than by legislation.

Mr. Ryu asked if a change can be made to 30 months for primary care physicians serving in underserved or rural communities.

Dr. GnanaDev commented that it would solve many problems.

Dr. Mahmood commented that the issue being brought up can be solved by completing everything months before applying for licensure, and that the individual would be able to be licensed within a week.

Ms. Lawson added that this should not be the Board's problem to solve, and that the hospitals should start the process sooner.

Dr. GnanaDev stated that California does not allow anyone to apply without a license in another state and that a full license is needed to have hospital privileges.

Ms. Lawson restated her comments that if the hospital knows a PTL holder is coming up on 36 months then they should start the process, and that this should not be a Board issue. Ms. Lawson commented that the Board can change its position to allow for a lesser period of time.

Mr. Ryu asked if the requirement can be 30 months for low-income and rural areas and 36 months for all others.

Ms. Webb replied that it would require a statutory change, but then it would set up a two-tiered system and the Board does not license by specialty.

Mr. Bone restated the motion, saying the Board does not believe the licensing structure needs to be changed and that the areas of concern would be addressed through other means.

Dr. Krauss and Dr. Hawkins both agreed.

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

Motion carried 7-1-0 (Maintain current position; Dr. GnanaDev opposed; Mr. Brooks, Ms. Campoverdi, Dr. Thorp, Mr. Watkins, and Dr. Yip absent)

Ms. Lawson asked if the Board would like to change any of its other positions, saying that the Board still wants the full fee amount, cost recovery, and a four-year extension.

Mr. Bone stated that the Board previously asked the legislature to make amendments to the enforcement monitor language, and if the Board is satisfied with the current language, then this can be struck from the support if amended position since it has been satisfactorily resolved.

Ms. Lawson asked Mr. Bone if there were any other issues that were not identified that he needs the Board's direction for.

Mr. Bone replied that it was all sufficiently laid out, unless there were other things that are in the bill that the Board does not like.

Mr. Watkins commented that it is problematic that the DCA director will appoint the enforcement monitor due to the conflict of interest. Mr. Watkins added that if it is not addressed, the Board will have the same trust issues.
Mr. Bone commented that the DCA director was the appointing body for the enforcement monitor 17 years ago and is consistent with the Board's position.

Mr. Watkins commented that the current director and deputy director were previously the executive director and deputy director at the Board which would undermine the point of an independent enforcement monitor.

Dr. GnanaDev stated he does not have a problem with the current language.

Mr. Watkins asked Dr. GnanaDev if he is okay with the conflict of interest.

Dr. GnanaDev replied that there will always be conflicts in the political appointments and that people in their positions are usually good enough to realize what their job is.

Mr. Watkins commented that DCA and the Board are both regulatory bodies and that the issues that will be monitored would be the same issues that were under the previous director.

Dr. GnanaDev stated that the director was appointed by the governor to run DCA and if she feels she is not the right person then she can designate someone else.

Mr. Watkins stated that the fact that he has to explain this is problematic.

Dr. Krauss commented that a conflict of interest can always be inferred and asked Mr. Watkins for a suggested solution as to who would appoint the enforcement monitor.

Mr. Watkins suggested someone out of California Business, Consumer Services and Housing Agency (Agency).

Ms. Lawson stated that the question on the table is whether the Board should change its current position on the enforcement monitor and explained the language in section 13 of the bill.

Mr. Watkins suggested changing the language to make the secretary of Agency the appointing authority for the enforcement monitor.

Ms. Lawson commented that the secretary is appointed, and to Mr. Watkins' point, Mr. Prasifka could be appointed to that same position. Ms. Lawson added that the Board cannot solve for individuals and the Board should pick the appointing authority notwithstanding who is currently in the position since that could change.

Mr. Watkins stated he is sensitive to the public trust issues which needs to be built upon.

Ms. Lawson asked Mr. Watkins if his position is to ask the legislature to vest the authority to appoint the enforcement monitor in someone else.

Mr. Watkins confirmed.

Dr. Hawkins stated that he has never questioned the ethics of the current DCA director Ms. Kirchmeyer.

Mr. Ryu stated that he has built his career on building public trust, but the Board cannot legislate for an individual. Mr. Ryu gave the scenario of Ms. Kirchmeyer getting promoted to secretary of Agency and asked if the Board would make changes if that happened.

Mr. Watkins spoke of mistrust versus people's lived experiences and the Board continuing business as usual.

Ms. Lawson stated that Mr. Watkins' characterization of the Board as not caring or being empathetic or understanding of concerns is unfair. Ms. Lawson continued, saying the Board asked for an enforcement monitor to show how it can improve and now the Board is quibbling over who should appoint the monitor. Ms. Lawson agreed with Mr. Ryu that it is not good public policy to legislate because of a particular person. Ms. Lawson commented that the Board could add guardrails for the DCA director so that the monitor is not affiliated with a certain person or organization.

Mr. Watkins commented that he thinks the Board should solve for these problems by putting in guardrails.

Ms. Lawson moved to maintain the current position on the enforcement monitor and request legislature add language to ensure the independence of the enforcement monitor from any advocacy organization/S: Dr. Krauss

Dr. Hawkins commented that he does not trust the legislature to do a better job than Ms. Kirchmeyer.

Dr. GnanaDev commented that he does not have a problem with the motion, and that he does not expect the DCA director to appoint someone affiliated with any group.

Mr. Bone asked to clarify the motion, restating that the Board is good with the language as it is on the enforcement monitor with the addition of the independence from advocacy organizations.

Ms. Lawson confirmed and stated she used the term *advocacy organizations* as an umbrella term to capture people who could have a financial interest or conflict of interest that would prevent them from being impartial.

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

Motion carried 8-0-0 (Maintain current position with added language to ensure independence of the enforcement monitor; Mr. Brooks, Ms. Campoverdi, Dr. Mahmood, Dr. Thorp, and Dr. Yip absent)

Mr. Bone summarized the Board's position, saying the Board is maintaining its support if amended position, but modifying it regarding the enforcement monitor, PTL and the confidential letter of advice. Mr. Bone continued, saying Board staff will encourage the governor to sign the bill into law even if all the conditions requested are not satisfied.

Agenda Item 10 Update from the Health Quality Investigation Unit

Ms. Nicholls began the update by saying there are currently 15 investigator vacancies, which is a 19 percent vacancy rate, and 14 candidates are in the background process. Ms. Nicholls explained that HQIU is conducting hiring panels to identify additional candidates to fill the vacancies and explained they are anticipating several retirements through the end of the year. Ms. Nicholls added that the vacancies include four positions that HQIU was granted to cover the influx of new cases from the passage of SB 425.

Ms. Nicholls stated that since SB 425 became effective on January 1, 2020, HQIU has received 96 investigations specific to sexual abuse or misconduct cases, and 18 of these investigations have been completed.

Ms. Nicholls commented that in the last fiscal year, HQIU completed 1,467 investigations and they continue to focus on completing the aged cases, which is why the closed case average is rising. Ms. Nicholls shared that HQIU's pending workload in January 2020 was 2,340 investigations, and at the end of July 2021 the pending workload was 1,653 investigations. Ms. Nicholls also shared that the number of cases over 365 days have steadily decreased from January to July of 2021. Ms. Nicholls commented that the Expert Procurement Unit accepted 353 cases to handle as part of the expert review process.

Ms. Nicholls stated that HQIU and Board staff engage in weekly meetings to discuss aged and priority cases, and HQIU continues to send Board staff a monthly report with status updates on aged cases.

Ms. Nicholls spoke of the aging unlicensed practice cases, saying clinics and businesses were shut down due to the pandemic and undercover operations could not be conducted. Ms. Nicholls added that another factor in these cases is telemedicine cases, which are difficult to prove ownership.

Dr. GnanaDev asked if the numbers will increase again due to the personnel vacancies and if HQIU is ready to fill those vacancies quickly.

Ms. Nicholls replied that there are 14 people in background, and they are vigorously holding hiring panels to make sure there are enough candidates.

Dr. Hawkins asked about the skill level for the investigators in background.

Ms. Nicholls responded that everyone in background is post-academy, which means they already have significant law enforcement experience.

Ms. Lubiano asked if any of the retirements had to do with the vaccine mandate.

Ms. Nicholls stated the retirements were primarily planned, and some had just decided they have had enough.

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

Agenda Item 11 Update from the Department of Consumer Affairs

Ms. Holmes began by welcoming Dr. Healzer to the Board. Ms. Holmes commented that DCA has received many questions about when and how boards will meet again in person and whether they can continue to meet remotely. Ms. Holmes stated that as the laws and executive orders stand today, boards and committees will be required to return to in-person meetings after September 30th. Ms Holmes explained that there is a possibility that remote meetings will be extended in some capacity, but there is currently no concrete news.

Ms. Holmes reported that state employees must show proof of vaccination or be subject to regular COVID-19 testing and are required to wear appropriate personal protective equipment (PPE). Ms. Holmes added that board and committee members are considered employees and must follow this protocol if they plan to be physically present in a DCA location.

Ms. Holmes spoke of public health orders issued for workers in healthcare settings and added that licensees are encouraged to thoroughly read the orders and regularly check local public health departments for additional vaccine requirements. Ms. Holmes stated that questions from licensees about healthcare worker requirements can be directed to the California Department of Public Health (CDPH).

Lastly, Ms. Holmes reminded employees and Board members that 2021 is a mandatory sexual harassment prevention training year.

Ms. Lawson asked how Board members can show proof of vaccination if they were to come into the Medical Board's locations

Ms. Holmes gave the two methods that DCA has implemented, one being uploading the vaccine information through the verification portal and the other method is setting up a Teams call with a member of human resources so they can view the vaccine information on camera.

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

Agenda Item 12 Update from the Attorney General's Office

Ms. Castro introduced two AGO staff members to contribute to the update, saying Ms. Harp is the budget officer in the Division of Operations and Ms. Celerio is the budget manager in the Legal Services Division.

Ms. Castro stated that Dr. Thorp previously commented on the Board's budgetary allocation for the AGO as well as not seeing a decrease in times for adjudication of cases. Ms. Castro commented that the increase of four million dollars accounts for the fee increase, and in the last three fiscal years, the amount of hours the AGO has worked on Board cases has not swayed, staying around 83,000 to 85,000 hours.

Ms. Harp explained that the Department of Justice (DOJ) provides legal services to client agencies and operates on a billable model where client agencies are charged hourly for legal services. Ms. Harp commented that the DOJ works to conduct a thorough review of all cases and bills 220 dollars per hour for attorney services, 205 dollars per hour for paralegal services, and 195 dollars an hour for auditor and research analyst services.

Dr. Hawkins asked what the difference is between attorneys and paralegals.

Ms. Harp replied that attorneys are in the attorney and deputy attorney general (DAG) classification, while paralegal services are in the senior legal analyst classification.

Ms. Castro added that there is no independent level among senior DAGs or DAGs, they are all at the 220-dollar level.

Dr. Hawkins asked what the paralegal rate is.

Ms. Harp replied that it is 205 dollars.

Dr. GnanaDev commented that the AGO's attorney rate is fairly low compared to other attorneys, but the paralegal rate is high. Dr. GnanaDev stated that a way the Board can manage its budget is raising revenue and cutting expenses and added that the AGO is one of the Board's biggest expenses.

Ms. Castro commented that the AGO is excited that the Board may get cost recovery and that the Board is getting a deal with the AGO when considering all expenses involved.

Ms. Lawson thanked Ms. Castro and everyone in the AGO for the good work they do for the Board and stated that they are a bargain compared to attorneys in the private market. Ms. Lawson expressed her appreciation to Ms. Castro and the DAGs for being responsive to the comments received regarding memos and the information provided during panel meetings.

Dr. GnanaDev commented that this recent panel meeting was the first time he saw how involved Ms. Castro was in answering questions and added that it was helpful and useful.

Dr. Hawkins commented on ALJs adjusting for cost recovery and physicians being motivated to settle if they know cost recovery is a factor. Dr. Hawkins asked for additional information on cost recovery and its impact.

Ms. Castro stated that the AGO strenuously negotiates costs and argues that its client agencies should be entitled to their entire money back for both HQIU staff and AGO staff. Ms. Castro added that all costs are coded in 15-minute increments and are provable. Ms. Castro commented that an ALJ may find a cost reduction compelling if the physician is a solo practitioner who pleads poverty or child support orders. Ms. Castro encouraged the Board to research other DCA boards for cost recovery information.

Mr. Watkins thanked Ms. Castro for enlightening him and the other panel members during the recent panel meeting, saying he was able to get the big picture and see that laws are written in a strategic way to create a sense of powerlessness. Mr. Watkins added that he was able to see how hard the DAGs work to get what is a non-exciting outcome from a public protection point of view. Mr. Watkins wished that perspective could be shared with the public.

Ms. Castro thanked Mr. Watkins as well as her staff.

Ms. Lawson asked for comments from the public.

Mr. Andrist commented that it is odd that the number of complaints has increased while the number of hours the AGO works has remained the same. Mr. Andrist also commented that he has been waiting for more than a year for Ms. Castro to follow up on questions from Judge Feinstein. Lastly, Mr. Andrist commented that Julie D'Angelo Fellmeth, the prior enforcement monitor, should make the nomination for the new enforcement monitor.

Ms. Lawson adjourned the meeting at 8:27 P.M.

RECESS

Friday, August 20, 2021

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

Members Present:
Kristina D. Lawson, J.D., President

Ryan Brooks
Alejandra Campoverdi
Dev GnanaDev, M.D.
Randy W. Hawkins, M.D., Vice President
James M. Healzer, M.D.
Howard R. Krauss, M.D.
Laurie Rose Lubiano, J.D., Secretary
Asif Mahmood, M.D.
David Ryu
Eserick “TJ” Watkins
Felix C. Yip, M.D.

Members Absent:
Richard E. Thorp, M.D.

Staff Present:
Aaron Bone, Chief of Legislation and Public Affairs
Erika Calderon, Staff Services Manager I
Valerie Caldwell, Associate Governmental Program Analyst
Charlotte Clark, Information Technology Supervisor I
Sean Eichelkraut, Information Technology Manager I
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
Tasha Renison, Associate Governmental Program Analyst
Letitia Robinson, Research Data Specialist II
Elizabeth Rojas, Staff Services Analyst
Emmalee Ross, Public 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:
Eric Andrist, The Patient Safety League
Rosie Arthursdotter
Marcey Brightwell, Brightwell Strategies
Vanessa Cajina
Gloria Castro, Attorney General’s Office
Yvonne Choong, California Medical Association
Kim Christensen, Los Angeles Times
James Conway

Dennis Cuevas-Romero, Physicians for a Healthy California
Matt Davis, Attorney General's Office
Nataly Diaz, California Primary Care Association
Mindy Ditterline
Tracy Dominguez
Cathy Doughty, Capitol Advocacy
Kimberly Elkin, Law Offices of Nicole Irmer
Virginia Farr
Francine Farrell
Bob Garcia
Roxanne Gould, Gould Government Relations
Lori Govar, IBH Solutions
Lindsay Gullahorn, Capitol Advocacy
Tom Hayashi
Christina Hildebrand, A Voice for Choice
Monique Himes
Marian Hollingsworth, The Patient Safety League
Carrie Holmes, Department of Consumer Affairs
Diane Holzer
Emily Hughes, California Medical Association
Gail Jara, California Public Protection & Physician Health, Inc.
Wendy Knecht
Susan Lauren
Greer Levin, Consumer Watchdog
Tim Madden, Madden Quiñonez Advocacy
April Manatt, California State Assembly
Lance Martin, California Medical Association
Sandra Martinez
Loretta Melby, California Board of Registered Nursing
Adrian Mohammed, California Medical Association
Michele Monserratt-Ramos, Consumer Watchdog
Robert Naylor
Erin Norwood, Norwood Associates, LLC
Gary Nye
Autumn Ogden, American Cancer Society
Sam Plantowsky
Jennifer Regacho, Capitol Advocacy
Catrina Reyes, California Academy of Family Physicians
Juan Reyes, California State Assembly
Gabby Reynaga, Norwood Associates, LLC
Eric Ryan, Health Quality Investigations Unit
Leanna Shields, Attorney General's Office
Nicette Short, NL Short Public Affairs
Greg Skipper, M.D., Center for Professional Recovery
Thomas Specht, USA Media
Ryan Spencer, RGS Consulting and Advocacy, LLC
Ryan Tacher, Department of Consumer Affairs

Agenda Item 17 Call to Order/Roll Call/Establishment of a Quorum

Ms. Lawson called the meeting of the Medical Board of California (Board) to order on August 20, 2021, at 9:00 A.M. A quorum was present and due notice was provided to all interested parties.

Agenda Item 18 Public Comments on Items not on the Agenda

Mr. Andrist disagreed with Dr. Krauss' comments yesterday about combining multiple complaints into one complaint, saying it is important to know how many different patients are complaining about one physician. Mr. Andrist commented on Board members receiving paper copies of the Board meeting material before the website link was available and made a public record request of when Board members first received a copy of the material for this Board meeting. Mr. Andrist disagreed with letting Ms. Kirchmeyer appoint the enforcement monitor.

Ms. Hollingsworth expressed her concern regarding the confidential letter of advice and added that the Board is fighting for doctors' reputations. Ms. Hollingsworth added that the confidential letter interferes with a patient's right to informed consent and knowing all the risks and benefits of a treatment or procedure. Ms. Hollingsworth asked why no one answered Mr. Watkins' question yesterday when he asked how much involvement the CMA had in SB 806.

Ms. Lawson addressed the issue of CMA's involvement in SB 806, saying this question should be addressed to the legislature or to CMA, as the Board does not have any knowledge as to what CMA's interest is in that legislation or what their influence is with legislation.

Ms. Martinez commented that there is needless suffering in California from opioid restrictions, abusive masking, and withholding safe and effective medicines from patients. Ms. Martinez commented that hydroxychloroquine or ivermectin are effective treatments for COVID and could have saved lives, but instead the Board is targeting physicians who provide these treatments.

Mr. Plantowsky asked the Board to lift restriction on ivermectin and hydroxychloroquine for pharmacists and pharmacies. Mr. Plantowsky commented that at the June 24th Board meeting, this was addressed, and a motion was passed to set up a committee, but he does not see that in the meeting minutes.

Ms. Monserratt-Ramos stated that she is representing her advocacy team as well as thousands of Californians who cannot attend the meeting, and expressed her appreciation to Ms. Lawson, Mr. Watkins, and members of the public for their input and work in the sunset review process. Ms. Monserratt-Ramos commented on the confidential letter of advice, saying the public needs minimal offenses that do not include quality of care cases as a guardrail. Ms. Monserratt-Ramos stated that the fee increase the Board is left with is ridiculous and suggested past and current CMA members on the Board convince CMA to allow the Board the fee increase that it needs.

Ms. Lauren thanked Mr. Watkins and Dr. Mahmood for their 'no' vote on the confidential letter of advice and added that the public is entitled to decide for themselves what constitutes a

minor infraction. Ms. Lauren commented on the need for patient records to be co-authored, plastic surgeons receiving positive reviews from other plastic surgeons despite the disfiguration and health problems they have caused their patients, and the dangers of adipose tissue removal in women.

Mr. Watkins commented that it is important to acknowledge when trauma happens, both with members of the public and with Board members, and requested Dr. Thorp be in thoughts and prayers.

Agenda Item 19 Presentation on Physician Substance Abuse Disorders

Mr. Varghese introduced Dr. Skipper, saying he has devoted his career to assisting professionals in crisis, has worked extensively with state regulatory boards throughout the country, and has published over 100 articles regarding professional impairment.

Dr. Skipper defined addiction as a chronic disease involving brain circuits, genetics, the environment, and an individual's life experiences, adding that prevention efforts and treatment are generally as successful as those for other chronic diseases. Dr. Skipper explained that addiction is referred to as a substance use disorder (SUD) and went through the spectrum of diagnostic criteria, from feeling a loss of control to physical withdrawals. Dr. Skipper explained that physicians have mental health and SUDs at about the same rate as everyone else, and that the lifetime prevalence of addiction for physicians is between 10 and 15 percent.

Dr. Skipper commented that physicians with SUDs are often in denial because they are afraid to lose their career, but the symptoms eventually become prominent enough that others begin to notice. Dr. Skipper noted that alcohol is the number one SUD of physicians, followed by opioids. Dr. Skipper explained that there is a difference between illness and impairment, saying illness does not cause impairment, but impairment is often the result of advanced illness. Dr. Skipper commented that medical boards in the United States encourage specialized programs for early intervention, evaluation, treatment, and monitoring. Dr. Skipper explained that physician health programs (PHP) are part of patient safety.

Dr. Skipper commented on why illegal and excessive use of substances is a violation of the Medical Practice Act, saying it causes impairment. Dr. Skipper explained that driving under the influence (DUI) is an important case finding opportunity, adding that DUIs are the second most common crime in the United States. Dr. Skipper gave recommendations regarding DUIs, including requiring a screening evaluation following the first DUI arrest, comprehensive evaluations, and treatment and monitoring for those diagnosed with moderate or severe SUD.

Dr. Skipper reviewed effective tools for treatment and monitoring, saying early intervention and evaluations are the most effective, along with treatment and monitoring. Dr. Skipper also reviewed factors to consider for deciding on early termination of probation, saying that addiction is a chronic illness that is prone to recurrence. Dr. Skipper added that PHPs do not offer early termination of monitoring since they are supportive programs that document treatment and recovery.

Dr. Skipper encouraged the Board to use comprehensive evaluations that include physical exams, advanced drug testing, psychiatric assessments, and psychological evaluations. Dr. Skipper explained that appropriate treatment is individualized and not time-based, goal oriented, and a mix of professional and non-professional therapy. Dr. Skipper recommended the Board refer all physicians for evaluation where a complaint includes a possible SUD and have the physicians pay for their own evaluations.

Dr. Skipper went through the benefits of having a PHP and added that many physicians comply with the programs because they do not want to be involved with the Board. Dr. Skipper added that a major role of the program should be education, including students, new residents, and hospitals.

Dr. Healzer asked Dr. Skipper to compare the PHP that he spoke of to the Board's former diversion program.

Dr. Skipper replied that the most common PHP is a non-profit that is supported by boards and medical associations, but it is not directly a board program, which encourages doctors to come forward. Dr. Skipper also stated that it is important to have a physician leader that can do the education and early intervention, and the diversion program did not have that.

Mr. Brooks asked if there was a way to identify doctors who have a predisposition to alcoholism or drug abuse.

Dr. Skipper replied that questionnaires can be an effective tool for early identification, especially in licensing, and added that family history plays a role.

Mr. Brooks stated that he is not necessarily talking about the clinical setting, but more about an ongoing quality of care issue for doctors.

Dr. Skipper responded that psychological testing has not been successful in predicting addiction but creating an environment that is confidential where physicians can seek help without punishment would be beneficial.

Dr. Krauss commented that the Board struggles with figuring out the correct pathway in dealing with SUDs. Dr. Krauss added that each state has its own rules and regulations and asked Dr. Skipper which states he thinks have an ideal program that the Board could study as a model.

Dr. Skipper replied that there is a high variation of effectiveness around the country and the Federation of State Physician Health Programs is developing criteria that will identify the best programs. Dr. Skipper noted that Washington and Colorado, among many other states, have highly effective programs.

Dr. Krauss commented that it is important to acknowledge that the PHP is double edged in that the medical boards are charged with protection of the public but also with rehabilitation of physicians. Dr. Krauss stated that the threat of loss of licensure causes physicians to hide their SUDs, but they need to come forward in a way that protects the public and allows for their rehabilitation. Dr. Krauss added that the Board needs to have a mechanism to identify physicians who need help before there is a DUI.

Dr. Skipper commented that helping physicians is protecting the public, and they are not mutually exclusive.

Dr. Yip asked Dr. Skipper if there is any ongoing collaboration between state boards and his organization. Dr. Yip commented that education starts in medical school and in residency programs and the outreach should be done before it becomes a problem on the job.

Dr. Skipper stated that the most commonly abused drug by physicians is alcohol, and it tends to take about 20 years to come to full severe fruition. Dr. Skipper continued, saying some symptoms are seen in the teens and twenties, but it often does not become a crisis until the 40s. Dr. Skipper commented that early intervention is important, and the PHP the Board is creating should be tasked with going to medical schools to provide information and encourage people to come forward.

Dr. Hawkins agreed with prevention as treatment and asked about licensees who have cases that come before the panels who say they are not substance abusing and not subject to the Uniform Standards.

Dr. Skipper stated that if the program is firm but supportive, the program can be useful because the physicians want help but are afraid to get it. Dr. Skipper continued, saying if the physician signs an agreement to stop practicing and get treatment and long-term monitoring, that paves the way to be less of a battle.

Mr. Watkins commented that the Board does not have a PHP, so it has to make do. Mr. Watkins stated that the Board frequently sees DUIs and is focused on cases with multiple DUIs and blood alcohol concentrations over .20, for example. Mr. Watkins continued, saying experts may give a clean bill of health with no SUD when there are criteria present showing there is a SUD. Mr. Watkins asked for guidance and what kind of tools are in place to interpret a licensee's condition.

Dr. Skipper commented that he often sees this scenario and that the Board should develop criteria for what it wants to see in an evaluation and added that having more than one professional involved is helpful.

Mr. Ryu asked what the current protocol is for DUI cases.

Ms. Webb stated that the Board has authorized the Physician Health and Wellness Program (PHWP) to be developed and the regulatory package is at the second level of review at DCA. Ms. Webb commented on excessive use of drugs or alcohol, covered under BPC 2239, saying the Board can take action if drugs or alcohol are used in such a manner that is dangerous or injurious to the licensee or to anyone else or to the extent that it impairs the ability of the licensee to practice medicine safely, or more than one misdemeanor or any felony involving the use of alcohol or drugs. Ms. Webb explained that this is why a one-time DUI with a high BAC, or if there were a collision, injuries, or property damage will come before the Board, while a one-time DUI with no other factors may not come before the Board for discipline. Ms. Webb commented that with a PHWP, the licensee may be referred, and it will not come to the Board

if they are fully compliant, but if it comes to the Board's attention then it will be looked at from an enforcement perspective.

Dr. Skipper encouraged the Board to look at referring licensees immediately after any complaint of a DUI or SUD and not wait until there is an investigation.

Mr. Ryu asked if a licensee is evaluated immediately after a complaint of a DUI or SUD is brought to the Board, and if not, how the Board can make that a mandatory requirement.

Ms. Webb replied that may require legislative help and she does not want to answer without giving the question due consideration to see what tools the Board already has. Ms. Webb added that there may need to be a policy directive about how the Board wants one-time DUI cases handled. Ms. Webb stated that BPC 820 allows the Board to request the licensee to undergo an evaluation, and many physicians are agreeable to do it voluntarily, otherwise there may need to be a petition to compel the evaluation, which goes through a hearing and is approved by the Board. Ms. Webb commented that these are good questions, and the Board can look at the tools that are available to see what changes, if any, Board members would want and what would need to be added through legislative or regulatory methods.

Dr. Mahmood commented that this is an important issue and asked if physicians with a DUI or SUD can be put on probation from their specialty and be monitored while they do their other work.

Dr. Skipper responded that the PHP is expected to delineate the aftercare, which often involves part-time practice and gradual resumption of activities under supervision and monitoring. Dr. Skipper added that the clinical program that treats the licensee can be part of helping the Board decide if there should be restrictions.

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented that licensees with a DUI often have other problems, and the Board should check to see if there are lawsuits against physicians who self-refer.

Mr. Andrist stated that the Board is not charged with rehabilitating physicians and quoted BPC 2229. Mr. Andrist commented that there are many working people with addiction problems who do not have a licensing agency to protect them, and physicians should be able to get their own help. Mr. Andrist suggested letting the CMA provide doctors with addiction programs.

Ms. Monserratt-Ramos gave a brief history of her time spent working on the issue of substance-abusing physicians. Ms. Monserratt-Ramos explained that PHPs are confidential, and patients have a right to know if their physician has a SUD. Ms. Monserratt-Ramos commented on the Uniform Standards, saying there is a movement to remove the Uniform Standards, but it is one of the few consumer protections left. Ms. Monserratt-Ramos commented that chronic diseases cannot be compared to SUDs because people choose addiction, but they do not choose diabetes or cancer.

Ms. Govar spoke as the director of the monitoring department at IBH Solutions and commented that they provide monitoring services like those that Dr. Skipper provides for

medical boards. Ms. Govar thanked the Board for speaking on this topic and spoke of the importance of an initial evaluation and early intervention. Ms. Govar offered her assistance in the development of the Board's PHWP.

Ms. Hollingsworth asked if she heard Dr. Skipper correctly in saying there is no incident of patient harm among rehabilitated doctors. Ms. Hollingsworth commented that reporting harm is sketchy at best at most hospitals. Ms. Hollingsworth also asked if a PHP means the Board will be less likely to discipline physicians with DUIs or if it will still go through the disciplinary process.

Ms. Farr commented that patient safety should come first, and that there was no mention of trauma. Ms. Farr stated that alcohol abuse is seen in a lot of people with trauma, and that trauma is not something that is taught in medical school. Ms. Farr commented that doctors should be required to take trauma education courses.

Ms. Campoverdi stated that Dr. Skipper's recommendation that a psychiatrist, psychologist, and addiction expert be part of the evaluation is a critical piece, and that the Board currently has medical experts giving their opinion on whether there is a SUD. Ms. Campoverdi asked Board staff how the Board can ensure there are addiction specialists as part of the evaluation.

Ms. Webb replied that Ms. Campoverdi can speak with enforcement staff and the Board could have a presentation or report back about the tools that are currently in place, then Board staff can get direction from the Board on any changes or additional tools needed.

Ms. Lawson commented that this can be worked on when the next Board meeting agenda is being prepared. Ms. Lawson commented that the Board should think about the recommendations made today, whether it is to the regulations of the PHWP or using existing tools to make sure the Board is advancing patient safety.

Agenda Item 20 Discussion and Possible Action on Legislation/Regulations

Mr. Bone reviewed the revised analysis of AB 359, Cooper, which clarifies that the existing pathways to licensure are available to licensees who require more than four attempts to pass Step 3 of the United States Medical Licensing Examination (USMLE). Mr. Bone reviewed the second portion of the bill relating to continuing medical education (CME) requirements, saying it expands the type of courses that a physician may take to meet their CME requirements.

Mr. Bone noted that the amendments reflect the Board's consideration during the May Board meeting and address the Board's concerns surrounding the USMLE provisions. Mr. Bone suggested an oppose unless amended position, saying once the bill is amended, the Board's position would change to neutral.

Dr. Krauss made a motion to oppose unless amended AB 359, Cooper/S: Dr. GnanaDev

Dr. GnanaDev commented that the Board previously opposed the bill but can now support the proposed changes.

Ms. Lawson asked for comments from the public.

Ms. Gould complemented Mr. Bone for being professional, responsible, and thorough in working together and communicating the Board's position on AB 359. Speaking on behalf of Choice Medical Group, Ms. Gould explained that AB 359 was introduced to address the greater need for health care access by providing out-of-state medical doctors with reciprocity and applying the standards that apply to doctors of osteopathic medicine to medical doctors. Ms. Gould explained that the authors and sponsors of the bill do not want inexperienced physicians practicing in California, so the current amendments were made.

Mr. Mohammed commented that the amendments made were to ensure physicians coming to California from out-of-state are safe and capable of practicing medicine. Mr. Mohammed expressed his appreciation in working with Mr. Bone on AB 359.

Ms. Arthursdotter asked if this bill is also being considered by the Osteopathic Medical Board of California. Ms. Arthursdotter commented on licensees requiring more than four times to pass the USMLE, saying it could be due to ADA accommodations. Ms. Arthursdotter commented that many CME courses are designed around revenue generation and not medical practices.

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

Motion carried 12-0-0 (Oppose unless amended; Dr. Thorp absent)

Mr. Bone introduced AB 1156, Weber, which would maintain the requirement to obtain a PTL but reinstate the previous licensing requirements that requires the Board to grant a license in as little as 12 months of postgraduate training for United States or Canadian medical school graduates and 24 months for international medical school graduates. In light of the Board's adopted position on SB 806, Mr. Bone suggested an oppose position.

Ms. Lawson asked if Board members have comments or areas of concern that this bill intended to address.

Dr. GnanaDev commented that he is the lone supporter of AB 1156, and he thinks the Board is doing a disservice to Californians by not allowing individuals to practice medicine when they finish school, as well as the other issues the PTL brings.

Ms. Lawson responded to Dr. GnanaDev's comment about not allowing physicians to practice, saying there is nothing in SB 806 nor AB 1156 that would explicitly prohibit those physicians from practicing, but instead there are issues with the administrative, licensing, and hospital privilege schemes that Dr. GnanaDev spoke about.

Ms. Lawson asked for comments from the public.

Mr. Cuevas-Romero commented that CMA has tried to solve the PTL issues through an administrative approach, as Ms. Lawson mentioned, but have been unsuccessful for nearly two years and were told that a statutory change is required to resolve the unintended consequences of the PTL. Mr. Cuevas-Romero expressed his support of AB 1156.

Mr. Madden spoke on behalf of the California Chapter of the American College of Emergency Physicians and commented that AB 1156 would appropriately address the concerns around the PTL including moonlighting, obtaining an X waiver, and leave issues. Mr. Madden stated that residents are making decisions to not pursue residency programs in California because of these issues. Mr. Madden expressed his support of AB 1156.

Ms. Cajina spoke on behalf of the California Academy of Family Physicians, saying they began to see issues from the PTL over a year ago and these issues will continue to mushroom further. Ms. Cajina stated that AB 1156 is the preferred approach to eliminating these problems. Ms. Cajina urged the Board to support AB 1156.

Mr. Reyes, the legislative director for Assemblymember Weber, asked for the Board's support of AB 1156. Mr. Reyes noted that the PTL issues did not exist prior to 2018 and that the PTL is interpreted as a restrictive P&S License. Mr. Reyes spoke of the PTL issues and commented that AB 1156 adopts a hybrid model of the old and current licensing structures to resolve the issues. Mr. Reyes stated that Assemblymember Weber's office strongly supports the completion of postgraduate training programs and expects the requirements within existing law to safeguard against that.

Ms. Lawson asked Mr. Reyes about the number of PTL holders who try to bill MediCal but are unable to.

Mr. Reyes replied that he does not have a number but would be happy to provide specific instances.

Ms. Lawson asked Mr. Reyes to confirm that the author supports completion of a program that is 36 months in length, which the Board interprets to be inclusive of approved leave taken.

Mr. Reyes replied that Assemblymember Weber is supportive of physicians completing and receiving credit for completing their training program. Mr. Reyes stated that they are interested to know the impetus of the change to the PTL and what information the Board or other stakeholders have of residents leaving their programs early.

Ms. Diaz stated that the California Primary Care Association is in strong support of AB 1156. Ms. Diaz spoke of the unintended consequences of the PTL and commented that SB 806 does not address the current limitations of the PTL.

Ms. Lawson asked Mr. Bone to review the Board's current position of SB 806 regarding PTL.

Mr. Bone responded that the Board adopted as part of the support if amended position to maintain the 36-month requirement for licensure and that the current licensing structure was appropriate. Mr. Bone noted that the Board was fine with some of the other ancillary changes and is committed to try to address the issues of medical and family leave policies and signing certain state forms.

Ms. Lawson commented that AB 1156 is essentially taking on the PTL issues outside of the sunset review legislation, so that would lead her to believe that the Board's position on AB 1156 would be oppose unless amended.

Mr. Bone agreed, saying the bill would grant licenses prior to 36 months, and asked Ms. Lawson what the amendments would include.

Mr. Brooks asked if it could be amended to be consistent with the current standards.

Mr. Bone responded that the direct goal of the bill is to change the current standards so an oppose position may be appropriate.

Ms. Lawson agreed with an oppose position, saying the Board's position is to keep the current regulatory scheme in place

Dr. Healzer commented about residents not being able to enroll in Medicare and MediCal programs as providers and asked if the PTL could be modified to allow for that.

Mr. Bone replied that it is unclear how the PTL can be amended to authorize this and added that he has had numerous conversations with Department of Health Care Services (DHCS) and there does not seem to be a pathway. Mr. Bone commented that the intent of the bill is to change the timeframe back to what it originally was to try to resolve this issue.

Ms. Lawson asked Mr. Bone if he has been provided with information regarding the number of PTL holders trying to bill MediCal and if the programs have sought any type of workaround. Ms. Lawson commented that she is trying to understand if the solution should be legislation or if the Board could come up with guidance to the programs.

Mr. Bone replied that he's asked for that kind of information, but he does not have any report or numbers. Mr. Bone stated that he has been sent denial letters and emails of those types of instances, but he does not have any statistical data.

Ms. Lawson asked if there are assurances that AB 1156, as it is currently written, would fix these problems.

Mr. Bone stated that he does not have assurances, nor has he spoke with DHCS, but it does seem like this bill would address these PTL problems since they materialized after the licensing change was made.

Ms. Webb pointed out that AB 1156 is a rollback to prior licensing requirements, saying that it keeps the PTL, but a person would have a P&S License after 12 months if they graduated from a medical school in the United States and 24 months if they graduated from an international medical school. Ms. Webb added that this bill does not do anything about the international medical schools going through the evaluation process.

Ms. Lawson asked Ms. Webb to describe the prior evaluation process for foreign medical schools.

Ms. Webb explained that there are two different pathways for foreign medical schools, saying one way is a non-profit government approved school that was designed to train its own citizens for practice primarily in that country, which has an easier pathway for recognition. The other pathway is a for-profit medical school that has a primary purpose of training individuals outside of that country for practice outside of that country, which goes through a rigorous, lengthy, multilayered process for approval. Ms. Webb commented that another part to that process is the Board reviewed the clinical rotations that medical students did in their third and fourth years and made sure that a certain number of weeks were involved in the required categories. With 36 months of postgraduate training, which the Board felt that reviewing schools and clinical rotation was not necessary since applicants for a P&S License would demonstrate their competence through completing 36 months of postgraduate training. Ms. Webb stated that the Board let the school evaluation go so long as the school was recognized by the World Directory of Medical Schools, for example.

Ms. Lawson commented that this bill is not a rollback to the Board's previous requirements since it does not include restoration of that rigorous process. Ms. Lawson commented that it was common for Board staff to travel internationally for a significant period of time to evaluate these schools.

Dr. Krauss commented that physician Board members have been through appropriate training and education well enough to respect the value of 36 months and the value of completion of a residency program, and that their hearts have opened to try to solve some of the problems that present to those in training. Dr. Krauss stated that he does not think the major issue is MediCal billing, and commented on the irony of it, saying residency training programs have supervision of licensed attendants, and when a resident is working in that setting, all of the services provided for MediCal and Medicare recipients are billed under the name of the supervising attending physician. Dr. Krauss continued, saying that the moonlighting circumstance is ironic because residency programs have limited number of weekly hours during which residents are allowed to work, and with the exception and approval of the program director, they cannot have hours set aside for moonlighting. Dr. Krauss stated that the major issue was touched on by Dr. GnanaDev, in that if someone does not have a license until the completion of their residency program, and it takes several months for them to have hospital privileges, then people are going to think twice about accepting a training program in California. Dr. Krauss suggested trying to figure out how to solve that problem.

Ms. Lawson commented that it is interesting that the Board has not heard about this issue of application and hospital privileges, which might be best solved by coordination between the Board and the processes by which the hospitals go through rather than through legislation.

Dr. Mahmood commented on the topic of physicians leaving California, saying the numbers given are arbitrary, and added that he did his own research and could not find any significant numbers. Dr. Mahmood commented that California has higher standards than other states but is skeptical that a significant number of people are leaving because they cannot get their license.

Dr. Hawkins made a motion to oppose AB 1156, Weber/S: Dr. Mahmood

Mr. Brooks asked if the motion is oppose or if it is oppose if amended.

Ms. Lawson stated it is oppose.

Dr. GnanaDev commented that Centers for Medicare and Medicaid Services (CMS) follows the federal law which is why they do not allow for billing by PTL holders, and the Drug Enforcement Administration (DEA) does not give DEA numbers without a full license. Dr. GnanaDev commented that SB 806 is a clean-up legislation to what was previously passed, and he does not look at it as going back to prior licensing requirements.

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

Motion carried 11-1-0 (Oppose; Dr. GnanaDev nay; Dr. Thorp absent)

Mr. Bone introduced AB 1278, Nazarian, which requires physicians to provide a written notification informing patients of the federal CMS Open Payments online database and to post notice in an area likely to be seen by patients in each office where they practice. Mr. Bone noted that the bill has been significantly amended since the Board last took a support position, and it does not have the same level of disclosure to patients. Mr. Bone recommended the Board maintain its support position since it would still improve awareness of the Open Payments database.

Dr. Hawkins asked Mr. Bone about the level of reporting that was required and if there was a dollar amount.

Mr. Bone replied that there was not a dollar threshold, and it would have required a reporting requirement for any amount that a physician may have received as a payment or transfer of value and added that this is still true. Mr. Bone explained that the bill now states physicians shall increase awareness of the database by posting a notice on the wall in the office, and must be done annually, and that there is no reporting requirement.

Ms. Campoverdi asked to confirm that the bill now states physicians must post notice letting patients know of the database and the requirement to disclose payments has been removed and added that she was in favor of the previous version of this bill at the last Board meeting.

Mr. Bone confirmed that the physician would have to provide notice to each patient at the initial visit and that notice would also have to be posted in the physician’s office.

Ms. Webb added that this change was not at the Board’s request.

Mr. Bone commented that the Board supported this bill from the beginning.

Ms. Campoverdi commented that the meat has been taken out of the bill and that a flyer is not going to move the patient protection intention forward.

Mr. Bone commented that the author and sponsor of the bill may be available for public comment, and it is up to them to stop the bill.

Dr. Krauss made a motion to support AB 1278, Nazarian/S: Dr. Mahmood

Ms. Lubiano asked if the ten-dollar threshold was still included in the bill.

Mr. Bone replied that there is not a ten-dollar threshold to post the flyer and that the Physician Payments Sunshine Act requires detailed information about payments and payments of value that are worth ten dollars or more to be made available to the public through CMS.

Mr. Watkins commented that the amendment has made the bill pointless for the Board to support, he does not want a support position, and that paperwork does not bring awareness or serve the original intent.

Ms. Lawson agreed that the bill has been gutted from its previous version and asked Mr. Watkins if his position is to not take a position or to oppose the idea that this additional disclosure would be provided. Ms. Lawson commented that although it is a baby step, it is still a step in the right direction.

Mr. Watkins responded that he would like to hear from the author and sponsor of the bill because he is curious why they made such significant changes.

Ms. Lawson asked for comments from the public.

Ms. Hildebrand commented that the bill was gutted by the CMA. Ms. Hildebrand agreed with Ms. Lawson in that this bill is better than nothing, but the Board should take a stand and ask legislators to bring back the bill in totality next year.

Ms. Hollingsworth commented that AB 1278 is another example of a great bill that was watered down to virtually nothing by the CMA and added that the bill now has no information that will alert patients to a doctor whose practice could be compromised by money from pharmaceutical or device companies.

Ms. Knecht commented that she is the person responsible for the genesis of AB 1278, and while she agrees that what happened to this bill is devastating, it is better than nothing. Ms. Knecht also commented that the CMA gutted the bill. Ms. Knecht stated that she spoke to many physicians who support this bill. Ms. Knecht commented that physicians involved in research or innovation is a good thing, but patients need to know all the information to make an informed decision. Ms. Knecht shared her appreciation for the Board supporting this bill and added that passing this bill will at least allow patients to dig deeper and create change.

Ms. Farr commented that it is frustrating to see another bill watered down by the CMA and that the CMA is always fighting against patient safety. Ms. Farr stated that the Board provides licenses to CMA and the Board should communicate guidelines to CMA.

Ms. Lawson clarified that the Board does not provide licenses to CMA, and they are a separate and independent organization.

Ms. Arthursdotter commented that posting notices is not effective to the consumer, nor is signing a document going to help the consumer.

Ms. Hughes spoke on behalf of the CMA and stated that the notice will need to be posted in the lobby of the medical office. Ms. Hughes shared that she is offended that Assemblymember Nazarian said Ms. Hughes lied to CMA members and that she is open to speaking with her. Ms. Hughes commented that the amendments allow for patient information as well as removing the administrative burden from physicians. Ms. Hughes added that CMA did not want a patient visit to turn from a personal health visit to a financial visit. Ms. Hughes reiterated that she has never lied to CMA members and that CMA supports patient safety.

Mr. Andrist commented that Ms. Hughes is a paid spokesman for the CMA, which is a union to protect doctors who are forced to join by local medical societies. Mr. Andrist stated that the CMA has a huge influence over the Board.

Dr. GnanaDev commented that he can either support this bill because it is better than nothing, oppose because of the changes, or be neutral.

Ms. Campoverdi commented that after hearing from the advocates and Ms. Knecht, she is comfortable supporting this bill. Ms. Campoverdi stated that it is important for the Board's voice to be heard in its support of the original version of the bill. Ms. Campoverdi shared her personal medical experiences, saying patients have a right to know the relationships their doctors have with medical device companies.

Mr. Bone commented that the Board could include its historical views on the prior version of the bill in an updated letter.

Mr. Watkins commented that he can support this now since the author indicated a support position would be appropriate but cautioned the Board in accepting better-than-nothing standards.

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

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

Mr. Bone introduced SB 310, Rubio, which establishes a cancer medication recycling program administered by a surplus medication collection and distribution intermediary to allow for the donation and redistribution of cancer drugs between patients of participating physicians until January 1, 2027. Mr. Bone explained that when the Board last discussed this bill, the Board would have been required to administer the program, and the Board's position was oppose unless amended, but that concern has since been satisfied and will now be regulated by the Board of Pharmacy.

Mr. Bone continued, saying the bill has also been amended to include language that limits the Board's authority to discipline licensees who are involved in this recycling program. Mr. Bone stated that he received proposed amendments last night from the sponsors that they indicate are intended to address these concerns. In light of these factors, Mr. Bone recommended an oppose unless amended position, and after the bill is amended to address the Board's requests, the position would change to neutral.

Mr. Brooks asked why the Board would have jurisdiction in this.

Mr. Bone responded that the Board's licensees would be collecting the medication and ensuring that it meets the qualifications of the program for redistribution.

Mr. Brooks commented that he was against this bill at the previous Board meeting, adding that he agrees with the concept, but the Board should be able to regulate its licensees. Mr. Brooks commented that this should be a Board of Pharmacy issue.

Mr. Bone commented that the core responsibility for oversight of the program would land with the Board of Pharmacy and explained that the Board's involvement is in investigating any complaints and disciplining any physician licensees.

Mr. Brooks asked if there are regulations or controls regarding the distribution and if there will be a rulemaking process.

Mr. Bone replied that he does not anticipate a rulemaking process and that the bill lays out requirements for the participating physicians. Mr. Bone added that the bill does not ban the Board from disciplining participating physicians, but there is language that limits the Board's authority, which Board staff believe is unnecessary and should not be inhibited to discipline physicians who violate the standard of care.

Mr. Brooks stated that his position is to oppose the bill due to these issues.

Mr. Bone stated that he received amendments from the author and sponsors last night that may address the Board's concerns, but he has not yet had a chance to analyze them, which is why he suggested an oppose unless amended position.

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

Dr. Krauss shared his concerns of moving to a neutral position if the amendments meet the Board's requests because this bill may end up being of great benefit to consumers, and the Board may want to consider supporting it.

Ms. Campoverdi agreed with Dr. Krauss to move to support position if the amendments are appropriate.

Dr. GnanaDev commented that this is an important program and asked Mr. Bone what the disciplinary issues may be.

Mr. Bone replied that the second part of the bill explains the liability issues, including physicians not being subject to disciplinary action for an injury caused when donating, accepting, or dispensing prescription drugs, and states that those immunities do not apply in cases of non-compliance, gross negligence, recklessness, intentional conduct, or in cases of malpractice unrelated to the quality of the medication. Mr. Bone added that incompetence and simple negligence are not in the list of exemptions. Mr. Bone stated that there is also language that states disciplinary actions taken by licensing and regulatory agencies shall not be affected, adding that it is challenging to figure out what the language means.

Dr. GnanaDev spoke of the importance of this bill and suggested a support if amended position to include the Board's obligation of disciplinary proceedings.

Mr. Bone explained that if the Board took that position, and the bill was not amended, then the Board would not be able to seek a veto or take further action.

Dr. Mahmood agreed with Dr. GnanaDev and stated that a support if amended position would at least fill the Board's obligation to help people get these expensive and life-saving medications.

Ms. Campoverdi suggested the Board hear from the public to see if the author could explain the recent amendments.

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented on compounding pharmacies, saying she does not see any mention of that in the bill. Ms. Arthursdotter also commented on considerations for medications being recalled.

Ms. Ogden spoke as a co-sponsor of the bill and stated that the amendments sent last night address the Board's concerns about disciplinary limitations. Ms. Ogden added that the Board of Pharmacy recommendations have also been adopted. Ms. Ogden replied to the previous commenter, saying compounding drugs are excluded from the bill and doctors must monitor and be aware of medication recalls. Ms Ogden requested the Board's support if amended position.

Ms. Short spoke as a co-sponsor of the bill and commented on the importance of this bill. Ms. Short stated that the amendments address the Board's concerns as well as the Board of Pharmacy's concerns. Ms. Short encouraged a support if amended position from the Board.

Ms. Lawson asked if the Board takes an oppose unless amended position, and if the amendments sent last night satisfy the Board's concerns, can the position then be support.

Mr. Bone stated that the mechanism to do that is to adopt a support if amended position.

Ms. Lawson shared her concern of taking a support if amended position and not being able to advocate for the Board if the amendments are not included.

Mr. Bone spoke of the requested amendments from the Board of Pharmacy, saying they will be the lead consumer protection agency in overseeing the program administrator and it would be good for the Board to consider.

Dr. Krauss commented that he thinks the Board is safer maintaining the oppose unless amended position, adding that the Board meets quarterly and if the amendments are made in this bill before the next meeting, Mr. Bone could be authorized to move the Board to a support position.

Mr. Brooks agreed with Dr. Krauss. Mr. Brooks asked Ms. Webb if the Board could give authority to change its position if the amendments are made without taking a vote at the time the amendments are made.

Ms. Webb replied that the Board can give that kind of authority.

Mr. Brooks asked Dr. Krauss if he would consider amending his motion to be support if amended.

Dr. Krauss amended his motion to support unless amended SB 310, Rubio/S: Dr. Healzer

Dr. GnanaDev commented that he can support this motion and he was going to vote no on the oppose unless amended motion. Dr. GnanaDev spoke of the importance of patients having access to these medications.

Ms. Campoverdi agreed with Dr. GnanaDev, saying he would not have been the only one, as she would have also voted no. Ms. Campoverdi also spoke of the importance of patients having access to these medications.

Ms. Lawson shared her understanding of the Board's position, saying the Board's position on the bill language that came in the meeting material is oppose unless amened and that the Board is providing authority to change that position to support once Mr. Bone has a chance to review the amendments and confirm they are consistent with the Board's discussion. Ms. Lawson continued, saying she would work with Mr. Bone to modify the position, and in the event the amendments do not address the Board's concerns, the Board's position would be oppose unless amended, and likewise, if the amendments do address the Board's concerns, the Board's position would be support.

Mr. Bone explained that page four of the bill analysis shows what the Board is seeking to address. Mr. Bone stated that if the bill is not amended to be consistent with the Board's position, then the Board would seek a veto, and if the bill is amended to be consistent with the Board's position, then the Board would seek signature from the governor.

Mr. Brooks commented if the bill is not amended to exactly what the Board is seeking, he is not sure the Board would want to veto the bill. Mr. Brooks stated that, from what he heard from the advocates and sponsors of the bill about the amendments being made, he is comfortable with the Board's position, adding that everyone on the Board wants the bill to work.

Mr. Bone stated that a support if amended position is appropriate with that sentiment.

Ms. Lawson stated that the Board has a support position if the amendments are made, but the Board is not ready to state that since the amendments are not in print. Ms. Lawson commented that the appropriate thing to do is to delegate her and Dr. Hawkins with the ability to work with Board staff to ensure the Board's position is accurately reflected.

Ms. Campoverdi commented that she is against an oppose position and asked if having that position, even for a short period of time, could hurt the bill.

Mr. Bone speculated that it is possible it could hurt, but it depends on how quickly a letter can be published and how quickly the amendments can go into print. Mr. Bone added that an opposing letter would not have to be sent if the amendments go into the bill before that.

Ms. Lawson asked if there is a reason a letter must be sent out.

Mr. Bone replied that typically a letter is sent, but it does not have to be done.

Dr. Mahmood commented that this would be a remarkable resource for people who have nothing else and an oppose unless amended position would be a hindrance. Dr. Mahmood added that the sponsors indicated the amendments will be made and the Board should support this.

Ms. Lawson replied that the Board agrees, and the problem is that the bill that is currently in print does not reflect the Board's consensus, which is why there is this interim position.

Dr. Krauss commented that an equally effective motion would be to support if amended, and if the amendments were not made then the Board could give authority for Ms. Lawson and Dr. Hawkins to work with Mr. Bone to switch the position to oppose.

Dr. Mahmood agreed with Dr. Krauss' suggestion.

Mr. Brooks commented that this is not a philosophical issue, but rather more of a legislative and political approach to ensuring the amendments will get into the bill, which is why he thinks an oppose unless amended position is the right approach.

Dr. Mahmood commented that if someone wants something to happen, then they need to give their support for it. Dr. Mahmood added that if the amendments are not made, then Ms. Lawson and Dr. Hawkins has the authority to oppose.

Ms. Lawson stated that the Board is trying to advance its position and Board members have the same objective. Ms. Lawson commented that if she and Dr. Hawkins are delegated with the authority to take the appropriate position once the requested amendments are in print, that will move the bill along.

Ms. Campoverdi commented that Dr. Krauss' suggestion meets the Board members' desires.

Ms. Lawson requested a motion to vote on.

Dr. Krauss amended his motion to support unless amended and delegate authority to Ms. Lawson and Dr. Hawkins to change the position to oppose if not amended SB 310, Rubio/S: Dr. Healzer

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

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

Mr. Bone shared the tracking chart of pending regulations.

Ms. Webb informed the Board that the regulations for the postgraduate training requirements have been approved and are in print, the approved certifying organizations have completed the 45-day comment period, and that the final statement of reasons will be done shortly. Ms. Webb updated the Board on the PHWP, saying it is in its second level of review at DCA.

Ms. Lawson asked if the postgraduate training requirements would need to be redone if any changes to the PTL program are made.

Ms. Webb replied that if there were any changes, the Board would have to review the regulations and act accordingly.

Dr. GnanaDev asked when the PHWP will begin.

Ms. Webb replied that there have been two versions, saying it went through an amendment when the proposed changes to the Uniform Standards were made, and Board staff restructured it so that changes did not have to be made to two regulatory sections every time there is a change to the Uniform Standards. Ms. Webb added that it is a large packet, so it is taking DCA time to review it, along with going back and forth when proposed changes are made to surrounding documents. Ms. Webb commented that 90 days is optimistic to get through DCA, and then it will go to Agency for another level of review.

Mr. Ryu asked if the PHWP is previous legislation that was passed and now in the process of being implemented.

Ms. Webb affirmed, explaining that the legislature authorized the Board to develop the program.

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

Agenda Item 21 Update from the Board of Registered Nursing on AB 890

Ms. Melby gave an update on the implementation of AB 890, adding that the nurse practitioner advisory committee will meet on August 31, 2021. Ms. Melby explained that the three subcommittees that were formed by that advisory committee will report on recommended regulations. Ms. Melby commented that they hope to present these regulations at their November meeting. Ms. Melby informed the Board that the Office of Professional Examination Services (OPES) is working with subject matter experts and have held workshops for the examination process. Ms. Melby spoke of updates on the Board of Registered Nursing's (BRN) website and their last board meeting.

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

Agenda Item 22 Update, Discussion, and Possible Action on Proposed Agenda from the Midwifery Advisory Council

Ms. Holzer reviewed the agenda items for the upcoming Midwifery Advisory Council (MAC) meeting and requested approval. Items included approval of the August 12, 2021 meeting minutes, report from the MAC chair, establishing goals for the MAC, report from the task force and possible action regarding MediCal related issues, update on proposed regulatory language for the Licensed Midwife Annual Report (LMAR), update on midwifery related legislation and sunset review, update on the midwifery program, discussion on LMAR compliance, discussion on training for MAC members, and a presentation by the CDPH regarding newborn screening requirements and compliance.

Ms. Holzer summarized the last MAC meeting held on August 12, 2021, reviewing actions taken and updates received.

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

Mr. Brooks moved to approve the proposed agenda/S: Dr. Hawkins

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

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

Motion carried 11-0-0 (Dr. Thorp and Dr. Yip absent)

Agenda Item 23 Discussion and Possible Action on Recommended Appointment to the Midwifery Advisory Council

Ms. Holzer recommended the Board approve appointee Monique Webster to the MAC for a three-year term, expiring June 30, 2024.

Dr. Krauss moved to approve the recommended appointee/S: Dr. Hawkins

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

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

Motion carried 11-0-0 (Dr. Thorp and Dr. Yip absent)

Agenda Item 13 Update on Progress Made from April 2021 Public Stakeholder Meeting

Mr. Prasifka commented on the additional public stakeholder meeting held on July 29, 2021, saying the agenda items included a video explaining the enforcement process, an update of the online complaint tracking system, and a presentation on the Board's new website.

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

Ms. Arthursdotter commented that she attended the April stakeholder meeting, but not the July meeting, and made suggestions regarding ADA accessibility. Ms. Arthursdotter stated that there are still ADA accessibility issues on the website and added that certain items are difficult to access.

Mr. Andrist commented that the Board tries to convey information in a good light and that the advocate meeting was a failure. Mr. Andrist stated that the agenda items were not what the advocates wanted, and the last portion of the meeting was spent on advocates talking about what they wanted. Mr. Andrist stated that the Board is not including advocates when it comes to the public advocate meetings and creating the agenda.

Ms. Hollingsworth commented that, while it is good to have the public stakeholder meetings, they are not meeting the goal of better understanding. Ms. Hollingsworth stated that advocates should have the ability to suggest agenda topics instead of the Board deciding the topics. Ms. Hollingsworth commented on the new website, saying improvement is needed.

Agenda Item 14 Update on the Health Professions Education Foundation

Dr. Hawkins reviewed the July 11, 2021, Health Professions Education Foundation (HPEF) meeting and explained what the HPEF is and what they do. Dr. Hawkins shared that the next application cycle for the Steven M. Thompson and various other loan repayment programs opens in September 2021, and the scholarship programs application cycle opens in January 2022. Dr. Hawkins spoke of AB 133 and how the Office of Statewide Health Planning and Development (OSHPD) has been elevated to the Department of Health Care Access. Dr. Hawkins added that it is not clear how or if the Board will participate in the new department. Dr. Hawkins stated that the next HPEF meeting is scheduled for September 8, 2021.

Dr. GnanaDev commented that after the September 8, 2021, meeting, HPEF will no longer exist. Dr. GnanaDev stated that he asked about the Board's involvement in the Steven M. Thompson loan repayment program after HPEF is dissolved and was told there would be a committee. Dr. GnanaDev stated that the Board needs to be involved since the funding for the program comes from the Board's licensees.

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

Ms. Arthursdotter shared that she is sorry to hear that HPEF is going away and added that it may have to adapt in a different way, such as training and education on current issues.

Agenda Item 15 Update on the Physician Assistant Board

Dr. Hawkins stated that the Physician Assistant Board (PAB) met on August 9, 2021 and explained what the PAB is and what they do. Dr. Hawkins spoke of BPC 3500 and proposed amendments to strike reference to jurisdiction and oversight by the Board, but physician assistants would still require a supervising physician. Dr. Hawkins added that the Board will retain its ability to discipline supervising physicians. Dr. Hawkins stated that the American Academy of Physician Assistants (AAPA) proposed a resolution affirming a title change of the profession from physician assistant to physician associate to eliminate the misconception that they assist rather than more accurately collaborate, diagnose, and treat. Dr. Hawkins commented that the next PAB meeting is November 8, 2021.

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

Ms. Arthursdotter commented on patients having access to their medical records, medical records now being electronic, and errors found in medical records. Ms. Arthursdotter also commented on the title change, saying it can add problems.

Agenda Item 16 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 reported that a retired enforcement manager, Susan Cady, was appointed to oversee and coordinate the project. Mr. Prasifka stated that in the initial stage, the task force researched new laws and regulatory changes that occurred since 2014 and identified guidelines issued by external agencies that may require updating. Mr. Prasifka added that the task force is in the final stage of vetting subject matter experts.

Dr. GnanaDev commented that many chronic pain patients felt the Board's guidelines went too far and asked that Board staff work with pain management specialists to assist in this project, adding that the Board needs to be fair and take care of suffering people.

Mr. Prasifka agreed with Dr. GnanaDev and stated the engagement is not limited to simply updating the guidelines. Mr. Prasifka commented on the recent closure of pain clinics and the Board working with stakeholders to give guidance to doctors who inherit legacy patients.

Dr. GnanaDev commented that doctors are afraid to write prescriptions and patients are suffering.

Ms. Lawson asked for comments from the public.

Ms. Arthursdotter commented that she has been in conversation with the Board for more than seven years regarding this topic and she has identified the problems. Ms. Arthursdotter stated that information was removed from the website and it needs to be returned. Ms. Arthursdotter commented that the CDC guidelines from 2016 were not meant for legacy patients or pain management specialists.

Dr. Hawkins spoke of having the proper experts reviewing cases involving opioids so that Board members can be educated on appropriate procedures and prescription dosage.

Agenda Item 24 Regular Election of Officers Pursuant to Administrative Manual

Ms. Lawson explained that the Board's Administrative Manual sets the requirements for elections that officers be elected at the first meeting of the fiscal year, and that officers were elected off-cycle in November due to term expirations. Ms. Lawson continued, saying officers shall serve for a term of one year and may be re-elected for more than one term, and added that the Board can elect the officers by slate or individually. Ms. Lawson stated that she would love to stay in the position if nominated, and asked Dr. Hawkins and Ms. Lubiano if they would like to continue in their positions if nominated.

Mr. Brooks nominated Ms. Lawson to continue as President.

Dr. GnanaDev nominated a slate of officers, saying he would like Ms. Lawson, Dr. Hawkins, and Ms. Lubiano to continue as President, Vice President, and Secretary, respectively.

Ms. Lawson asked if there were additional nominations. Hearing none, Ms. Lawson asked for comments from the public. There were none.

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

Nominations supported 11-0-0 (Dr. Thorp and Dr. Yip absent)

Agenda Item 25 Future Agenda Items

Dr. Krauss asked for a presentation from Ms. Castro at the AGO on reasons the disciplinary guidelines are not always followed to the letter in relation to age of cases, strength of experts, and patient or family support.

Mr. Brooks asked for a follow up on the recidivism rates for the last ten years.

Ms. Lubiano requested a presentation on being trauma informed and trauma training. Ms. Lubiano also requested a presentation on diversity, equity, and inclusion in the Board's outreach efforts.

Dr. Mahmood requested input on the mental health of physicians in the context of the pandemic.

Dr. Healzer asked for a follow up to Dr. Skipper's presentation to provide a more detailed presentation on what a physician health program should look like, the structure and function of the program, and how the program would interact with the disciplinary process.

Ms. Lawson asked for an update on the Physician Health and Wellness Program, including what is in the proposed regulations.

Ms. Lawson asked for comments from the public.

Ms. Lauren requested the topic of changing California Code of Regulations (CCR) section 1356.6 on liposuction.

Mr. Andrist requested a panel of doctors and advocates to go through closed cases of the Board, with personal information redacted, to see if the panel comes up with the same decisions that the Board did. Mr. Andrist also requested an agenda item on the Public Records Act. Lastly, Mr. Andrist requested an item to discuss the Board shutting down the public when it feels they are not speaking on topic.

Ms. Arthursdotter requested an agenda item on intractable pain. Ms. Arthursdotter also asked the Board to conduct an internal audit to address administrative problems and spoke of items not being on the Board's website.

Ms. Monserratt-Ramos requested a presentation on how enforcement works with other departments and organizations that conduct quality of care investigations and added that the enforcement unit is not accepting CDPH investigation results that directly link to the conduct of the provider.

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

Mr. Brooks echoed one of Mr. Andrist's requests and asked about having a workshop with mock cases to evaluate the decision-making process during panel meetings.

Agenda Item 26 Adjournment

Ms. Lawson adjourned the meeting at 1:54 P.M.

Signature on File	11/18/2021
Kristina D. Lawson, J.D., President	Date
Signature on File	11/18/2021
Laurie Rose Lubiano, J.D., Secretary	Date
Signature on File	11/18/2021
William Prasifka, Executive Director	Date