



Osteopathic Medical Board of California

Teleconference Minutes

August 10, 2022

**MEMBERS
PRESENT:**

Cyrus Buhari, D.O., *President*
Andrew Moreno, *Secretary Treasurer*
Gor Adamyan
Claudia Mercado
Hemesh Patel, D.O.
Denise Pines, MBA
Michael Kim, D.O.

**MEMBERS
ABSENT:**

Elizabeth Jensen, D.O., *Vice President*

**STAFF
PRESENT:**

Michael Kanotz, Esq., Legal Counsel, DCA
Mark Ito, Executive Director
Terri Thorfinnson, Assistant Executive Director
Machiko Chong, Executive Analyst
Corey Sparks, Enforcement Analyst

**MEMBERS OF
THE AUDIENCE:**

Sandra Perez
Michelle Monserrat Ramos, *Consumer Watch Dogs*
Monique Hines, *Consumer Watch Dogs*
Tracy Dominguez, *Consumer Watch Dogs*
Xavier De Leon, *Consumer Watch Dogs*
William Loyd, DCA Budgets
Carrie Holmes, *DCA Board and Bureau Relations*
Kathleen Tarr
Susan Lauren

Board Meeting Minutes – August 10, 2022

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

The Board Meeting of the Osteopathic Medical Board of California (OMBC) was called to order by Vice President, Elizabeth Jensen, D.O. at 10:19 a.m. Executive Analyst, Machiko Chong, called roll and determined a quorum was present. Each of the Board Members in attendance gave their name and teleconference address. Due notice was provided to all interested parties.

Agenda Item 2 Public Comment for Items not on the Agenda

Note: The Board may not discuss or take action on any matter raised during this public comment section except to decide whether to place the matter on the agenda of a future meeting [Government Code Sections 11125, 11125.7(a)]

Ms. Perez informed the board that her daughter passed away as a result of physician negligence and noted that she has submitted numerous consumer complaints with both the Medical Board of California and the Osteopathic Medical Board of California that were subsequently closed; causing her to resubmit her complaints due to statute of limitations. She expressed concern that not only had the detailed complaint and enforcement process/presentation had been postponed until the December 2022 teleconference, but also with the fact that both Boards failed to ensure that the limitations stat

Ms. Monserratt-Ramos' comments and read by Machiko Chong: "Good morning board members. I am Michele Monserratt-Ramos. I am the Kathy Olsen Patient Advocate with Consumer Watchdog. I am a state and national advocate that has been working for greater transparency and accountability with the MBC for 17 years. I am responsible for the initiation of SB 1441 the Uniform Standards for Substance Abusing Health Care Professionals in the state. I lobbied for SB 1448 the Patients Right to Know Act for 2 years. I now work with advocates across the state of California on medical negligence issues and I help them navigate through your complex and consumer unfriendly enforcement process. After monitoring the Medical Board of CA for many years, I have just started monitoring this board this year along with a few of my advocate families. I was shocked to find out that the date of this meeting had been changed without any warning. I came across the date change when I checked the meeting materials on Monday (2 days ago). Had I not checked the meeting materials early we might have missed this meeting and maybe that is what you wanted. Maybe you didn't want public participation at your quarterly meeting. As a subscriber, I have received your meeting agenda 6 – 7 days before your previously scheduled quarterly meetings. I have yet to receive the agenda by email for this meeting. In years of monitoring the MBC they have never moved up a meeting without notice. They moved meeting locations months before with a discussion during a public board meeting, but they have never done anything like this. You may not want members of the public to participate in your meeting's, but you need to understand members of the public took time off from work and worked around their work schedules to attend this meeting on August 18th. Members of the public are filing complaints with this board. They can see how your enforcement process is not

Board Meeting Minutes – August 10, 2022

working for consumers and they are not happy. So, they are attending these meetings. You either need to keep your scheduled meetings that you planned for months in advance, or you need to send out an email to your subscribers warning the public of the change in meeting dates. Obviously, there aren't that many of us here at your meetings. Recently I have talked to two members of the executive staff. Someone could have given the public some warning of the meeting date change. We are not getting off to a good start here. There are meeting notification laws to follow. We can do better. Thank you."

Ms. Hines expressed concern regarding the boards lack of notification surrounding the August 10th change in meeting date. And asked that the Board either keep its scheduled meeting dates; or ensure that the public is properly notified of any potential changes. She made note that all complaints received by the Board should not only be regarded as case numbers, which may potentially include instances of Medical Practice Act or Business and Professions code violations. Rather, board staff should be mindful that complaints are important and affect the lives of individuals who are desperately seeking properly executed investigations that are handled timely.

Ms. Dominguez also expressed concern regarding the boards lack of notification surrounding the August 10th change in meeting date. And asked that the Board either keep its scheduled meeting dates; or ensure that the public is properly notified of any potential changes. She would like to see things change with regards to the enforcement process which is one of the main reasons why she attends and participates at the quarterly board meetings.

Mr. De Leon also expressed concern regarding the boards lack of notification surrounding the August 10th change in meeting date. And asked that the Board either keep its scheduled meeting dates; or ensure that the public is properly notified of any potential changes.

Agenda Item 3 Review and Possible Approval of Minutes

Dr. Buhari called for a motion for approval of the meeting minutes of the April 14, 2022, Teleconference Board Meetings. He also thanked Dr. Jensen for chairing the teleconference in his absence.

Motion to approve the April 14, 2022, Teleconference Board Meeting minutes with no corrections.

Motion – Ms. Pines **Second** – Mr. Adamyan

- Roll Call Vote was taken
 - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Kim, Dr. Patel, Ms. Pines
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Jensen, Ms. Mercado, Mr. Moreno

Board Meeting Minutes – August 10, 2022

- Motion carried to approve the April 14, 2022, Teleconference Board Meeting minutes with no corrections.

Agenda Item 4 Petition for Early Termination of Probation, Eric I. Lin, D.O., 20A 7966 – Hearing was Cancelled

Proceedings to conduct Petition for Early Termination of Probation were cancelled at the request of the Petitioner.

Agenda Item 5 Budget Report – Bill Loyd, DCA Budgets and Karen Munoz, Manager, DCA Budgets

Bill Loyd provided the Board with a detailed overview of the Board's budget for the fiscal year. Mr. Loyd indicated that the OMBC has a healthy fund condition and is anticipated to spend within their appropriation.

Agenda Item 6 Department of Consumer Affairs (DCA) Update – Mary Kathryn Cruz Jones, Deputy Director of Board and Bureau Relations, DCA

Deputy Director Cruz-Jones thanked the Board for allowing her to speak and welcomed Dr. Kim who was recently appointed to the Board and thanked him for his willingness to serve.

She informed the Board that Governor Newsom signed SB 189 on June 30, 2022, which reinstates through July 1, 2023, the remote meeting provisions of the Bagley-Keene open meeting act; placed into effect during the pandemic. DCA still asks that boards continue to track costs incurred during each meeting held, regardless of if it took place in-person or virtually. DCA is also requesting that each Board and Bureau complete a Public Meetings Survey to assist in helping track and compare costs of each in person and virtual meeting, which should be completed not more than 30 days after a meeting is conducted. She advised that those Boards and Bureaus who choose to hold an in-person meeting should still do so with the State and Local Health Public guidelines that apply to the area where meetings are being held.

She informed the Board that the inaugural Enlightened Licensing Project report is now available for viewing and was distributed to all Boards and Bureaus on Friday, May 13th. The innovative and collaborative project was conducted in partnership with the Board of Registered Nursing (BRN) and was designed to both streamline and enhance the licensing process by utilizing the knowledge and expertise of (Subject Matter Experts) SME within DCA's Boards and Bureaus. The SMEs thoroughly assessed the licensing processes of BRN staff, which allowed the co-chairs to provide recommendations to

Board Meeting Minutes – August 10, 2022

introduce new ideas and implement best practices for critical licensing activities. DCA held a brown bag event on June 1st to review the recommendations with all Boards and Bureaus and hopes that they could learn from the report and implement some of the recommendations where applicable. The group will now begin reviewing the Enforcement Processes of another Board so that they may begin assessing the strengths and weaknesses of the current process while also providing recommendations.

On July 5, 2022, DCA held a brown bag for Executive Officers and Bureau Chiefs to roll out the changes that were made to DCA's regulation, development, and approval process. She noted that DCA's Executive Officers and Bureau Chiefs cabinet had also previously discussed and approved the changes prior to the brown bag, and information regarding the changes was made available to all Boards and Bureaus.

On June 24, 2022, DCA hired Nicole Le as Deputy Director of the Office of Administrative Services. She has worked in state service for over 20 years and was previously employed with the Contractors State Licensing Board and the Department of Motor Vehicles. Over the last 10 years, she has served in the capacities of Acting Deputy Director of the Office of Administrative Services; and Chief of the DCA Office of Human Resources.

Deputy Director Cruz-Jones informed board members that Carry Holmes, Deputy Director, Board Bureau Relations and Brianna Miller, Board Bureau Relations had both recently departed from the tenure with DCA. Both ladies will be greatly missed and were a huge asset to the Department.

Lastly, Deputy Director Cruz-Jones reminded the board members of their requirement to complete the Board Member Orientation Training (BMOT) within a year from their reappointment date. She noted that the next available meeting would be held virtually on October 12th.

Agenda Item 7 Executive Director's Report – Mark Ito

Mr. Ito updated the Board on licensing statistics, staffing, regulations, and COVID-19 updates, which were included in the Board packet.

Ms. Mercado noted an increase in the percentage of physician and surgeon licenses and Fictitious name permits, converting to a delinquent status. She also inquired whether board staff knew of any reasons that might affect this change and was advised by Mr. Ito that a license/permit that converts into a delinquent status can be a result of a multitude of factors outside of the Boards control. Ms. Mercado questioned the status change for those physicians wanting to go into retirement and was informed that many opt to go into an inactive status as a way to honor their license. Additionally, those licensees/permits that are delinquent may remain that way no more than 5-years before converting to a cancelled status.

Board Meeting Minutes – August 10, 2022

Enforcement/Discipline – The Board’s Lead Enforcement Analyst, Corey Sparks, presented the enforcement report to the Board and provided written materials showing various enforcement data.

Ms. Pines inquired if board staff are experiencing a delay in the processing of consumer complaints due the Boards lack of in-house Medical Consultation and was advised by Mr. Sparks that there have been no delays in the processing of complaints received in office. Ms. Pines also acknowledged the complaint intake staff and praised their ability to timely comply with complaint processing milestones.

Ms. Pines inquired about the possible cause of delay for desk and field investigations that take upwards of 2 years to complete. Mr. Sparks advised that many of those cases are typically overprescribing investigations or issues of criminal matters involving the DEA. He further explained that overprescribing investigations take a while to complete due to the requirement of field investigator needing to contact patients involved in each case and obtain consent to review their medical records. On occasion, this procedure may take upwards of six months to a year to complete and may result in a subpoena needing to be issued. In the event that a patient continues to deny the request and the investigator feels that records strongly support the case being built, an enforcement subpoena would be requested to gain access to records.

Ms. Hines expressed her concern regarding the review and investigation of 805 reports receive by the Board and noted that the charts presented by Mr. Sparks reflect that only 2 of the 6 805 reports received were investigated accordingly. She inquired on the factors that resulted in the remaining 4 reports where cause was not found, and whether or not the outcomes for those 805 reports that were processed had been posted on the Board’s site and asked where they could be found.

Ms. Perez stated that the enforcement report presented was abysmal and noted that the Board’s ability to only complete roughly 5% of all complaints received was just as horrific. She admits that although the percentage of completion may not be entirely accurate, the charts and graphs included in the report did not depict the Board in a good light. Ms. Perez also addressed the earlier comments made by Mr. Sparks regarding the Board’s lack of an in-house Medical Consultant and questioned the thoroughness of each complaint review completed. Considering that each quality-of-care complaint is to be reviewed by a Medical Consultant. She inquired how the Board would be rectifying the issue and stated that she would be emailing Mr. Sparks directly of her recommendations and all other concerns had with the processing of consumer complaints.

Ms. Dominguez expressed disdain with how the Board has handled complaints regarding minor children and the concern that statute of limitations are not being met due to staff not being properly educated on the rules regarding how and in what time frame children are interviewed regarding these matters.

Mr. De Leon voiced his desire to ensure that the enforcement complaint process as requested by Dr. Jensen, be placed on the December 2022 teleconference agenda. He

Board Meeting Minutes – August 10, 2022

also expressed concern with how the Board has handled complaints regarding minor children and the board's ability to meet the statute of limitations as required for those cases.

Agenda Item 8 Discussion and Possible Action on Pending Legislation– Terri Thorfinnson

A. 2022 Legislation

- AB 225 (Gray) Department of Consumer Affairs: boards: veterans: military spouses: licenses
- AB 1604 (Holden) The Upward Mobility Act of 2022: boards and commissions: civil service: examinations: classifications
- AB 1636 (Weber) Physician's and surgeon's certificate: registered sex offenders
- AB 1662 (Gipson) Licensing boards: disqualification from licensure: criminal conviction
- AB 1733 (Quirk) State bodies: open meetings
- AB 1954 (Quirk) Physicians and surgeons: treatment and medication of patients using cannabis
- AB 2055 (Low) Controlled substances: CURES database
- AB 2098 (Low) Physicians and surgeons: unprofessional conduct
- SB 1031 (Ochoa Bogh) Healing arts boards: inactive license fees
- SB 1237 (Newman) Licenses: military service
- SB 1365 (Jones) Licensing boards: procedures

Ms. Thorfinnson briefly went through the legislative bills that pertained to the osteopathic profession and noted the bills that could have a possible fiscal impact on the Board.

AB 1636 (Weber) Physician's and surgeon's certificate: registered sex offenders.

Ms. Thorfinnson noted that approval of the proposed bill would not result in a fiscal impact to the Board or an increase in workload for board staff. However, it would offer more direction to the Board in terms of disciplinary decisions. There were some concerns regarding clarification of the different aspects as it pertains to stipulations, yet the statute is silent. To Ms. Thorfinnson's knowledge the Medical Board of California has taken a stance of support with an amendment of clarification as it applies to stipulations.

Ms. Pines suggested that the Board take a position of support of AB 1636 with a caveat of amendment to include clarification for stipulations.

Dr. Buhari called for a motion to support AB 1636 (Weber) Physician's and surgeon's certificate: registered sex offenders.

Board Meeting Minutes – August 10, 2022

Motion to support AB 1636 (Weber) Physician’s and surgeon’s certificate: registered sex offenders in conjunction with MBC’s recommendation that the bill include application to stipulations.

Motion – Ms. Pines **Second** – Mr. Adamyan

- Roll Call Vote was taken
 - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Kim, Dr. Patel, Ms. Pines
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Jensen, Ms. Mercado, Mr. Moreno

- Motion carried to support AB 1636 (Weber) Physician’s and surgeon’s certificate: registered sex offenders in conjunction with MBC’s recommendation that the bill include application to stipulations.

AB 1604 (Holden) The Upward Mobility Act of 2022: boards and commissions: civil service: examinations: classifications

Approved proposal of AB1604 would establish a policy of the state that the composition of state boards and commissions be broadly reflective of the general public. Removing reference to ethnic minorities or women from this policy doesn’t exclude them from removing the language, it merely amends the language.

Ms. Mercado and Mr. Moreno confirmed if the bill was removing all language referencing women and minorities and inquired what would be added to replace the language being removed. They were advised by Ms. Thorfinnson that the replacement language would be reflective of the communities as opposed to calling out minorities and ethnicities and gender in specific.

Dr. Jensen noted her concern with the proposed language. She indicated that although she understood the general concept and idea behind the bill and assumed that it was to increase diversity, equity, social justice and ensuring that people were not isolated and called out. However, she also indicated that the proposed language was not indicative nor reflective of what was trying to be conveyed within the proposed language. She inquired on the timeframe the board had to take a stance on the language and whether they had time to weigh in later, due to some of the board members concerns. Ms. Pines agreed with Dr. Jensen regarding the recommended language amendments.

Mr. Ito agreed with Dr. Jensen’s idea of holding off on taking a stance on the bill and stated that it could be revisited at the August 2022 Board Meeting, once more information was obtained regarding what would be included in the new language.

Board Meeting Minutes – August 10, 2022

AB 2055 (Low) Controlled Substances: CURES database

Ms. Thorfinnson explained that this bill proposes that the CURES database be moved from the Department of Justice (DOJ) to the California State Board of Pharmacy which is housed under the Department of Consumer Affairs. Dr. Patel expressed the frustration that many physicians have with regards to the frequent password changes and other user issues that are incurred while using the CURES database. Dr. Buhari inquired if the Board was aware of the intent behind the bill, however, board staff was not able to provide any insight.

Motion to support AB 2055 (Low) Controlled Substances: CURES database.

Motion – Dr. Patel **Second** – Ms. Pines

- Roll Call Vote was taken
 - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Kim, Dr. Patel, Ms. Pines
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Jensen, Ms. Mercado, Mr. Moreno

- Motion carried to support AB 2055 (Low) Controlled Substances: CURES database.

AB 2626 (Calderon) Medical Board of California: licensee discipline: abortion

AB 2626 is one many bills drafted to address the Supreme Courts position on Roe v. Wade and was created to prevent disciplinary action of those allopathic and osteopathic physicians who preform abortion services. The language also addresses the circumvention of licensure denial for those applicants who have been disciplined in another state due to performance of abortion services.

Motion to support AB 2626 (Calderon) Medical Board of California: licensee discipline: abortion.

Motion – Dr. Patel **Second** – Ms. Pines

- Roll Call Vote was taken
 - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Kim, Dr. Patel, Ms. Pines
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Jensen, Ms. Mercado, Mr. Moreno

- Motion carried to support AB 2626 (Calderon) Medical Board of California: licensee discipline: abortion.

Board Meeting Minutes – August 10, 2022

AB 2098 (Low) Physicians and surgeons: unprofessional conduct

Ms. Thorfinnson noted that this bill would add a statutory violation for those physicians making alternate recommendations that deviate from the Centers for Disease Control and Prevention (CDC). She explained that the intention of the bill was quite possibly to make it clear that a physician albeit having vast medical knowledge and training, would be doing a disservice to consumers and their patients by going against CDC recommendations with regards to COVID 19 protocol. Ms. Thorfinnson went on to explain that the lack of clarity and vagueness surrounding potential disciplinary action for misinformation provided is cause for only offering support of the bill pending amendment of its language.

Dr. Buhari and Ms. Pines both acknowledged that the bill in it's current state is too much of a slippery slope and blurs the lines of how to approach multiple areas of care as opposed to focusing on the one matter. Ms. Pines expressed concern with how a difference in opinion of treatment as opposed to difference in treatment directive, is ultimately grouped into one definition and subsequently labeled as misinformation.

Ms. Thorfinnson informed the Board that the statutory language as written defines misinformation as "false information that is contradicted by contemporary scientific consensus to an extent that its dissemination constitutes gross negligence by a licensee." Dr. Buhari noted that he would still be in opposition of the bill as it provides a template that limits the patient care being delivered.

Motion to oppose AB 2098 (Low) Physicians and surgeons: unprofessional conduct.

Motion – Dr. Buhari **Second** – Mr. Adamyan

- Roll Call Vote was taken
 - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Kim, Dr. Patel, Ms. Pines
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Jensen, Ms. Mercado, Mr. Moreno
- Motion carried to oppose AB 2098 (Low) Physicians and surgeons: unprofessional conduct.

AB 2790 (Wicks) Reporting of Crimes: mandated reporters

Ms. Thorfinnson provided an overview of the bill and noted that it was a good policy bill. Mr. Ito included that although the policy was fantastic, he was not sure whether it fell within the jurisdiction of the Board as it relates to public protection. Ms. Thorfinnson agreed and noted how the bill would be a great item for professional members to voice their opinion as it addresses public safety precautions.

Board Meeting Minutes – August 10, 2022

Motion to support AB 2790 (Wicks) Reporting of Crimes: mandated reporters.

Motion – Ms. Pines **Second** – Dr. Kim

- Roll Call Vote was taken
 - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Kim, Dr. Patel, Ms. Pines
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Jensen, Ms. Mercado, Mr. Moreno
- Motion carried to support AB 2790 (Wicks) Reporting of Crimes: mandated reporters.

SB 1443 (Roth) The Department of Consumer Affairs

Mr. Ito explained that although SB 1443 is the Sunset Bill for some Board and Bureaus under DCA, the bill directly affects the Board's licensure because it eliminates our prorated licensure status. This would allow the Board to remove the 2nd review and approval process while also allowing the Board to collect all applicable fees at the same time. The fee breakdown would result in a licensee paying roughly \$17/mo for a total of \$400 and have a license issued for a period of two-years.

Motion to support SB 1443 (Roth) The Department of Consumer Affairs

Motion – Dr. Patel **Second** – Dr. Kim

- Roll Call Vote was taken
 - **Aye** – Mr. Adamyan, Dr. Buhari, Dr. Kim, Dr. Patel, Ms. Pines
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Jensen, Ms. Mercado, Mr. Moreno
- Motion carried to support SB 1443 (Roth) The Department of Consumer Affairs

Agenda Item 9 Future Agenda Items

- Complaints and Enforcement Process
- AB 1604 (Holden) The Upward Mobility Act of 2022: boards and commissions: civil service: examinations: classifications

Agenda Item 10 Future Meeting Dates

- Thursday, December 8, 2022 @ 10:00 am – *Teleconference*
- Thursday, January 19, 2023 @ 10:00 am – *Teleconference*
- Thursday, May 11, 2023 @ 10:00 am – *Teleconference*

Board Meeting Minutes – August 10, 2022

- Thursday, August 17, 2023 @ 10:00 am – *TBD*
- Thursday, December 7, 2023 @ 10:00 am – *Teleconference*

Agenda Item 11 Adjournment

There being no further business or public comment, Dr. Jensen adjourned the meeting at 5:09 p.m.