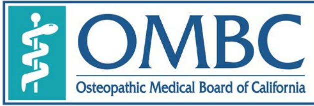

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Osteopathic Medical Board of California

Approved Board Meeting Minutes

January 19, 2023

MEMBERS PRESENT:	Cyrus Buhari, D.O., President Elizabeth Jensen, D.O., Vice President Andrew Moreno, Secretary-Treasurer Gor Adamyan Claudia L. Mercado Hemesh M. Patel, D.O Denise Pines, MBA
MEMBERS ABSENT:	Michael Kim, D.O
STAFF PRESENT:	Michael Kanotz, Esq., Legal Counsel, DCA Erika Calderon, Executive Director, OMBC Terri Thorfinnson, Staff Services Manager, OMBC Machiko Chong, Executive Analyst, OMBC Corey Sparks, Enforcement Analyst, OMBC Beth Dutchler, Enforcement Analyst, OMBC Steve Ly, Enforcement Analyst, OMBC Dina Ruprecht, Application Analyst, OMBC Gloria Castro, Senior Assistant Attorney General Kathleen Nicholls, Chief of the Division of Investigation, DCA Karolyn Westfall, Deputy Attorney General Heather Sand, Budget Analyst, DCA Judie Bucciarelli, Staff Services Manager, Executive Office, DCA Melissa Gear, Deputy Director, Board and Bureau Relations, DCA Bryce Penney, Public Affairs Office, DCA Peter Fournier, Information Office, Public Affairs Office, DCA Renee Milano, Manager, Fiscal Office, DCA Kristy Schieldge, Attorney IV, Legal Affairs, DCA Joseph May, Special Investigator, DCA

Board Meeting Minutes - January 19, 2023

MEMBERS OF THE AUDIENCE:	Michelle Monserrat Ramos, Consumer Watchdogs Monique Himes, Consumer Watchdogs Tracy Dominguez, Consumer Watchdogs Selena Alvarez, Consumer Watchdogs Xavier De Leon, Consumer Watchdogs Carmen Balber, Consumer Watchdogs John Ennis, Consumer Watchdogs Maria Ibarra-Navarrette Holly Macriss, Executive Director, OPSC Cassandra Mallory, Senior Director of Membership, OPSC

1. Call to Order – 9:00 a.m.

The Board meeting of the Osteopathic Medical Board of California (OMBC) was called to order by Board President, Cyrus Buhari, DO., at 9:09 a.m.

2. Roll Call / Establishment of a Quorum

Executive Analyst, Machiko Chong, called roll and established that a quorum was present. Member Gor Adamyan was absent at the time of roll call. Due notice was provided to all interested parties.

3. Reading of the Board's Mission Statement – Elizabeth Jensen, DO, Vice President

Dr. Johnson read the Board's Mission Statement:

> The mission of the Board is to protect the public by requiring competency, accountability, and integrity, in the safe practice of medicine by Osteopathic Physicians and Surgeons.

4. Public Comment on 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)]

Michele Monserrat-Ramos with Consumer Watchdog stated she has been monitoring and advocating with the Medical Board of California for 17 years. She just began joining OMBC meetings with her team a year ago. Prior to this meeting, OMBC did not have time limitations for public comment. She noticed that OMBC does, now. One thing that comes to mind is that every time the Board discusses as an issue, the primary question is: What does the Medical Board do? Since the primary concern is what the Medical Board does, why would you choose to not adopt the same public participation guidelines that they have? Your time limitation of 2 minutes per person and 10 minutes total per agenda

item is inadequate. You are not giving the public adequate time to engage with you. She requests that OMBC adopt the Medical Board's public comment guidelines of 3 minutes per person, and 40 minutes total for public comment not on the agenda, and 3 minutes per person, and 20 minutes total for items on the agenda. The president of the Medical Board takes all public comment regardless of time. I recommend you do the same. For this meeting, since agenda item 14 was placed on the agenda due to the work of our team, I'm requesting that you take all members of the public who wish to speak on that agenda item, and in the future, adopt the Medical Board's guidelines for public comment. These restrictions are sending the public a message, that you do not want to hear from us. Since we appear to be the only members of the public that engage with you, this is the message we are receiving. We will continue to work with you until you adjust the limitations.

5. Review and Possible Approval of Minutes

A. 2023 Adopted Meeting Calendar

a. Thursday, January 19, 2023

B. 2023 Proposed Meeting Calendar

After calling for discussion by members of the Board, Dr. Buhari called for a motion on the August, September, and October 2023 Teleconference Board Meeting Calendar, and approval of the Minutes.

Ms. Pines made a motion to adopt, and Dr. Jensen seconded.

Members of the public were given opportunity to comment, and a roll call vote was taken.

No comments.

Motion to Adopt the 2023 Teleconference Board Meeting Calendar and Meeting Minutes

Motion – Ms. Pines
Second – Dr. Jensen

- Aye – Mr. Adamyan
  Dr. Buhari
  Dr. Jensen
  Ms. Mercado
  Mr. Moreno
  Dr. Patel
  Ms. Pines
- Nay – None
- Recuse – None
- Absent – Michael Kim, D.O

The motion carries.

6. President's Report – *Cyrus Buhari, DO*

Dr. Buhari announced and welcomed to the Board, the arrival of OMBC's newly appointed Executive Director, Erika Calderon.

Ms. Calderon thanked the Board for allowing her the opportunity to serve as their Executive Director and thanked her staff for such a warm welcome.

Dr. Buhari stated that today's meeting format will be a little different.

Claudia Mercado requested clarification on Erika's starting date, which was confirmed to be November 1, 2022.

Dr. Buhari called for public comment.

No comments.

7. Executive Director's Report – *Erika Calderon*

A. Administrative Services, including personnel, and technology updates
B. Licensing Program Summary, including licensing unit updates, and statistics
C. Enforcement Program Summary, including enforcement unit updates, and statistics
D. Probation Program Update-Corey Sparks, Enforcement Analyst
a. Probation Program Stats
E. Update on The Osteopathic Physicians & Surgeons of California Association (OPSC)
F. Update on The Federation of State Medical Boards (FSMB)
G. Update on The Controlled Substances Utilization Review and Evaluation System (CURES)
H. Department of Health Care Access and Information (HCAI) Survey Transaction

<u>Administrative Services, including personnel, and technology updates</u>

Erika began her report on Administrative Services, noting that the Board currently has 13.9 authorized positions, of which, 2 half-time positions are currently vacant: one in Licensing, and one in Enforcement.

Erika announced the recruitment of Andrea Harman, who began in October of 2022. She currently serves as the Board's front desk receptionist.

The Board also filled its full-time, permanent staff services analyst position in the licensing unit. Gabriela Gonzalez begins Monday.

A limited-term staff services manager I position has been posted. The SSMI will oversee the Board's licensing program. Interviews will be conducted in the coming weeks. Hopes are to establish this as a permanent position through a budget change proposal in the future.

The previously mentioned vacant half-time staff services analyst position in the licensing unit will be advertised very soon. This position was received through legislative budget change proposal and will handle the workload associated with complying with Senate bill 806, which includes manually adding modifiers to the Breeze system to help identify and track licensees who must comply with newly established licensing requirements.

The second vacant position is a half-time medical consultant position in the enforcement unit. At this time, the medical consultant position will not be filled. The funds will instead be allocated to the above-mentioned licensing program manager position.

Erika reported that the Board currently contracts with 135 medical consultants and expert reviewers, who possess a wide range of specialties and already assist the Board with the daily review of cases.

They are working to add even more medical consultants and expert reviewers to the current list. Particularly, consultants and experts with an expertise and knowledge in reviewing inappropriate prescribing cases.

Lead Enforcement Analyst, Corey Sparks has accepted a promotional opportunity with the Medical Board of California. Erika wished him well and announced that his position will be advertised in the upcoming weeks.

OMBC's legal counsel, Michael Kanotz, will begin transitioning out of his role to the Board, and John Kinn will transition in. Erika welcomed Mr. Kinn.

The Board is exploring what positions it can create immediately as limited-term positions through its blanket authority and using current funds to support these positions.

Erika announced that OMBC now has its Facebook and Twitter accounts up and running, and she thanked Peter with DCA's Public Affairs Office, for creating both accounts very quickly, and for assisting the Board with the daily updates to the newly established accounts, as well as the Board's LinkedIn profile.

Through social media, Erika hopes to improve Board awareness, create interest for the Osteopathic profession, and allow the Board the opportunity to be more engaged and transparent with the osteopathic community, the public, consumers, and all of its stakeholders.

On December 1, 2022, the Board met with DCA's Website and Redesign team to begin the process of redesigning OMBC's web page. They hope to start renovating very soon

to make the page more user friendly, innovative, and at the same time, more efficient for the stakeholders. They project this to be a very lengthy process, as the Board has a great deal of clean up to do of its current content before converting to the new template.

It's stated that many other Boards within the Department are also working with the team to begin similar renovation projects. With that said, it is difficult to predict a completion date, but she hopes to have the project finished by the end of this fiscal year, or early next.

There are two PowerPoint presentations underway that the Board intends to put together. The goal is to create a presentation on the Board's application process, and a presentation on the laws and regulations pertaining to the practice of osteopathic medicine.

Once the licensing manager is onboarded, the plan is to start reaching out to the 3 osteopathic medical schools in California to set up presentations for all of the D.O students. The presentations will provide guidance on licensure requirements, the application process, and will provide regulation awareness to promote consumer protection.

There are also plans to tag team with the Osteopathic Physicians and Surgeons of California Association on these efforts.

A member commented that it can be a very bulky process for licenses to get re-licensed and find information quickly. He feels as though the website right now is geared more towards consumers, but we must remember that our role is not only enforcement and protection of the public, but also providing licensure and making it more user-friendly for the licensees is a huge step in the right direction.

Ms. Pines welcomed Erika and commented on her fast start out of the box, which is exciting. She thinks the things Erika is tackling are great, and thanked Corey and Michael for their service to the Board.

Claudia Mercado requested that Erika brief the members on updates to Breeze. Erika replied that she has experience from prior Boards in engaging with the Breeze agile groups, and her manager, Terri Thorfinnson, will be spearheading the project. They meet regularly, daily, with DCA, to stay on top of everything. They partnered up with other allied health groups, such as the Physician Assistant Board and the Medical Board of California. Claudia asked that Erika advocate for Breeze, itself, to also work on updating their user interface with the licensee.

Claudia expressed that she loves that Erika is working on LinkedIn and Facebook but has a concern about the imagery at the top of the OMBC Facebook page. She pointed out that there are 2 male physicians and 1 female, and the female is in the back. As a Board member, she wants to advocate for our branding to be strategic and to be thoughtful.

She would also love to propose to the Board that we advocate for more women physicians on the Board. So, when speaking to students, try promoting diversity within the osteopathic field. She requested that we push to have the website completed withing 6-9 months, because the physicians have been asking for this for the past 2-3 years. Erika took notes on all requests, and said she is meeting with the team, working with them. The team asked her to identify all the content that she does not want to transfer over to the next template to make it easier for updates to happen later. They are at the very early stages of identifying what's in each page.

Claudia requested that Erika provide the members with timelines in terms of holding DCA accountable for deliverables.

Dr. Buhari called for public comment.

Public member, Michele Monserrat-Ramos, was given 2 minutes to speak: Good morning, I am Michelle Monserrat-Ramos, and I am with Consumer Watchdog. I work with families across the state of California who have been harmed or lost family members due to medical negligence. I also am one of those families. We work on issues concerning medical negligence, maternal mortality, regulatory Board reform, and I work with families across the state to help them navigate the enforcement process. We would like to welcome President Erika Calderon. We see the difference in enforcement statistics and additional speakers on the agenda, providing more information for the public and the Board. We appreciate it. We look forward to working with, you. We would like to thank Cory sparks for his service. He worked with us and did his best to provide information and we greatly appreciate that, and we wish him well on his endeavor with a Medical Board of California. Thank you.

Licensing Program Summary, including licensing unit updates, and statistics

As previously reported in past Board meetings, the Board is experiencing a backlog in its applications and has high processing times, however, as referenced in the staffing considerations, the Board is exploring adding new positions to address this issue very quickly and eliminate and prevent future backlogs. In addition to adding staff, the Board is already starting the conversation of transitioning all from paper applications to Breeze. Erika reported they have already done so with the post-graduate training licenses, and she would like to make the same transition for physician and surgeon licenses, as well. Converting to Breeze will save a lot of processing time.

On January 1st, the elimination of the pro-rata license fee and license cycle went into effect. This was requested by the Board from the legislator to eliminate the birth-month issuance of a license and the pro-rata fee. All licenses issued after January 1, 2023, will be charged the full license fee of $447, and will expire every 2 years.

Last year, the renewal period was extended to 120 days. This change was made in Breeze when SB 806 was implemented and the purpose of extending the renewal window was to provide licensees additional time to complete their renewals.

In October of 2022, reminder postcards for renewals went into effect. This change eliminated the bulky 14-page renewal application from being printed and mailed out for all renewals, saving the Board postage expenses, Breeze expense, and workload.

The Board currently has a total of 13,509 physicians and surgeons, 1,370 post-graduate training licensees, and 1,180 fictious name permits.

The application services statistics for Q1/Q2 2022/2023 reports total number of applications received, and the total number of applications approved, and it provides a comparison to our numbers from last fiscal year Q1/Q2.

The total number of applications received has increased by 82 percent, compared to last year. This is a significant increase that current staffing can't compete with. She attributes the growth to be from the added post-graduate training license types, and of course the peak time of applications submitted after the completion of the PTL and graduation. Despite the Board's backlog, they have approved 21 percent more applications this year so far in comparison to last year at this time.

Erika thanked staff for their all-hands-on deck approach the moment she walked in the door.

The three-year licensing maintenance statistical report illustrates a percentage change in the last two fiscal years. The number of applications is increasing each year. In the last two fiscal years, there was a 76 percent increase in the physician & surgeons' section, a slight decline at 5 percent in post-graduate training licenses, and a 2 percent increase in FNPs.

The processing numbers in the report incorporate the time of initial submission of the application, to when all application deficiencies are met, to the moment the application is approved. The Board had a 51 percent increase in processing time in comparison to last year. It is taking roughly 7 months to license our physicians, and that is a huge concern. As mentioned, we have new staff joining us and a manager coming on soon. We hope to see the operations of this unit improve. We are seeing the light at the end of the tunnel.

A Board member asked if they ever discussed the interstate medical licensing compact or talked about it as an avenue to help our physicians get their licenses a bit more efficiently. With the covid pandemic, telemedicine has exploded, and the development of this compact allows physicians a kind of pre-check so that if they meet certain criteria, they get their licenses in each state that participates in the compact instantly. Thirty-seven states participate currently, but California is not one of them. For us to participate, we would have to bring this to legislature and have it be signed into law. Just wondering if that's been discussed in the past.

Dr. Buhari replied he doesn't think it's been brought up, but we can put it on the agenda for the next meeting to get that conversation started.

Another Board member welcomed Erika and asked what she foresees as far as processing times of the application process. What would our future goal be?

Erika replied that her future goal would be two weeks, but the average for other Boards and Bureaus is roughly 30 to 60 days. Some that are already operating in Breeze have a 2-week turnaround.

Claudia Mercado remarked, as you're taking on these projects, how do we capture all of this information? It would be great if you could run a few trials to see what the licensing process will look like and push for DCA to work fast as possible. If you can tell us what is working, versus something that is not working. What is your biggest bottleneck right now in licensing?

Erika said her biggest hurdle is staffing. There is only one full-time staff member dedicated to working applications right now. Bringing on another full-time staff member will make an impact. Erika stated she has always been a working manager and she jumps in to assist whenever possible. She had DCA conduct a licensing enlightenment program and she and DCA will be reviewing the results together to see where they can improve efforts on their end.

Claudia would like another agenda item added regarding federation. She would love for the public to attend that conversation.

Dr. Buhari requested public comment.

No comments.

Enforcement Program Summary, including enforcement unit updates, and statistics

Erika foresees several projects on the horizon. She plans to evaluate the entire enforcement process of the Board to see where improvements can be made. The Consumer Complaint form has been updated and is now available on OMBC's web page. There was a need to improve this form to make it easier to read, fill out, and gather upfront investigation documents that our consumers may not be aware are an essential part of the investigation. Instructions were added to the front page to encourage the complainant to attach a copy of any supporting documents they may have in their possession, such as patient medical records, photographs, audio/video records, letters, emails, tests, billing statements, proof of payment, police reports, court documents, or any internal employment administrative investigation records.

In addition, the release forms are now attached to the complaint, itself, and more space has been added to the allegations section to allow complainants to provide a more robust summary of the incident in question. By doing this, enforcement staff hope to save intake

processing time, gather essential evidence, and speed up the process of our complaints, in turn providing greater and faster consumer protection.

After meeting with enforcement staff, it was also identified that roughly 50 percent of OMBC's complaints are sent to the Medical Board of California in error, instead of OMBC. This creates extra work for both Boards and impacts both Boards' statistical measures, statute of limitations, and most importantly, early intervention to the protections of OMBC's consumers. The Board has reached out to MBC to get their assistance in directing our consumer population our way.

To help with case aging, the enforcement program will be implementing monthly case reviews that will be conducted the last week of every month to help cases move along. In addition, enforcement staff is now receiving individualized monthly pending reports which highlights high priority cases, cases with short statute of limitations, and any aged case that is above the 180-day performance measure for desk investigations.

The Board also started the process of getting enforcement staff access to LexisNexis, which is a public record database. This database will allow staff to search for information such as addresses and phone numbers. This becomes extremely helpful in those instances where consumers failed to include their contact information and we need to obtain a medical release to be able to gather the record for our review.

A monthly meeting with the Division of Investigations office has been established. These meetings are conducted on the last Thursday of each month between Erika, Supervising Special Investigator of the Enforcement Support Unit, Melissa Doss, and the chief of DOI, Kathleen Nichols. The goal is to establish an open line of communication between the Board and the investigative staff to discuss enforcement related matters that may impact both departments. Erika is also meeting regularly with the attorney general's office and consults with DCA legal counsel on a frequent basis. Additionally, Erika provided information related to the Board's enforcement statics, which are included in the meeting materials.

3-year milestone statistics sees a steady number of complaints received each year. The Board is averaging about 600 complaints, yearly. Case initiation is improving, as previously stated, and case aging is declining. The number of cases being referred to the AG's office is increasing, resulting in more accusations being filed.

Dr. Buhari requested comment from members of the Board.

A member asked, what are some things that attributed to Erika's success in bringing the complaint intake numbers down?

Erika stated that she discussed with enforcement staff the importance of case initiation and statutes, of starting the process of communication, and the laws governing this.

Another member asked if our website has the status of accusations or complaints for the public; something that shows what phase their complaint is in.

Erika stated that we do not post anything about the complaint on the website because they are confidential. We send an acknowledgment letter with the case number, and they are welcome to call any time for an update. The first public document regarding discipline is the accusation. That is posted on the web.

A member stated that, because the number of cases referred to AG's office has gone up, we'll likely need more expert reviewers. Do we have a shortage of expert reviewers? Do we have a plan to create a more robust recruitment?

Erika replied that they are undertaking that project right now. They've reached out to all their experts that have contracts to now also encourage them to become consultants, as well. We have also reached out to 34 physicians that have expertise in overprescribing cases.

A member asked if we (OMBC) are planning on having our own expert reviewer training? When he did the expert reviewer training years ago, it was with the Medical Board. It would have been nice to have our own training that is more along the lines of what we (D.O.'s) do.

Erika said that is the intention. She had a preliminary conversation with the AG's office to work towards doing just that. It is another project on the horizon for enforcement.

Claudia Mercado asked for the online complaint form link to include something informing the public that they are able to look up licenses to determine if the doctor is an M.D. or D.O. It's hard for the public to put one and one together. Integrate this so the public can verify is it's a D.O. they are dealing with.

Erika said we do have a spreadsheet that Corey put together listing disciplinary proceedings under the consumer tab, disciplinary actions, which shows our quarterly disciplinary actions. Corey provided an explanation of the spreadsheet to the Board.

Claudia said it's great that we have that additional level of transparency.

Erika added that all disciplinary documents and pertinent information are posted on our website under license verification.

Dr. Buhari requested public comment.

No comments.

Probation Program Update-Corey Sparks, Enforcement Analyst

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

In the first and second quarters of fiscal year 2022/2023, two additional licensees were placed on probation, two licensees successfully completed probation, and one probationer's license was revoked, bringing the total number of probationers to 33. These licenses were placed on probation for various causes. Of the 33 probationers, 9 continued to toll, as they were either residing out of state or have an inactive license status. Of the 24 licensees that were not tolling, 6 were enrolled and participating in the Board 's drug and alcohol recovery monitoring program at the end of the second quarter. One probationer completed the alcohol recovery monitoring program in the first quarter. The Maximus program is doing an excellent job. There has been very little recidivism with the individuals in the Maximus program. All Maximus participants are currently in compliance. Additionally, the Board revoked one license for noncompliance through default decision, there is one current open investigation, and one individual where the Board needed to take action with an individual who had been on probation in the past.

Dr. Buhari requested comment from members of the Board.

Claudia thanked Corey for his service and wished him well. Gor Adamyan thanked Corey, as well. Dr. Jensen thanked Corey and wished him well.

Claudia asked for Corey to briefly explain what the transition looks like now that we are using Breeze as well to submit our votes for cases? Is the new process working? More efficient?

Corey stated it seems to be working fine, but some of the members might have had difficulty logging in.

Erica stated she has procedures for Breeze mail voting and will provide it to any member who may need them. She can also provide training to any new member who may need it.

Corey believes Breeze voting will make the process more efficient.

Dr. Buhari called for public comment.

No comments.

Update on The Osteopathic Physicians & Surgeons of California Association (OPSC)

Erika attended the OPSC directors meeting in November. Plans are to meet with Erika and OPSC quarterly or more frequently. Board staff are planning to Attend OPSC's 2023 Fun In The Sun Rekindling the Joy of Practicing Medicine conference, which will be hosted in Coronado from February 23 through February 26. Planning to host a booth which will allow us the opportunity to promote our social media accounts.

Staff from OMBC and OPSC received training on January 12 on the federation credentials verification services. They found this training to be extremely informative, especially for licensing staff. They were able to get an idea for how the verification process occurs and how all of the records are obtained, verified, and transmitted to the different state licensing Boards.

Update on The Federation of State Medical Boards (FSMB)

Erika will be attending the Administrators in Medicine FSMB Director's meeting virtually on January 30-31, 2023.

Staff and Erika are planning to attend the FSMB 2023 educational meeting which will be hosted in Minneapolis, MN May 4-6. Erika invited the members to attend any of the conferences mentioned above.

Update on The Controlled Substances Utilization Review and Evaluation System (CURES)

The original $6.00 annual CURES fee collected at the time of renewal was increased, effective April 1, 2021, to $11.00, annually. Effective April 1, 2023, the fee was decreased to $9.00, annually.

Department of Health Care Access and Information (HCAI) Survey Transaction

In July of last year, the Department of Health Care Access and Information (HCAI) Survey Transaction was implemented in Breeze. A month after it was implemented, the Board started to receive complaints from licensees who had not completed the survey, indicating that their employers were concerned that they showed to be noncompliant on their physician and surgeons license profile. That prompted us to create a new, separate transaction in Breeze to allow licensees the ability to update the survey at any time of the year, instead of waiting for their renewal cycle.

Dr. Buhari requested comment from members of the Board.

A member thanked Erika for inviting the members to upcoming conferences.

Claudia Mercado asked about the training by the FSMB. What is this training about? Compact licenses?

Erika stated the training is regarding the verification of documents that are submitted for licensure requirements. Licensees can create an account with FSMB, and through that process, they indicate what school they attended, what post-graduate training course they are attending, and the program will then gather the necessary documents to provide to the licensing Board for their application process. They then compile the documents to expedite the application.

Claudia Mercado mentioned she was under the impression that the CURES system would be replaced with the new system. Is that still happening? Regarding the logging of prescriptions by D.O.s; how is the Board getting notified if there are concerns of somebody abusing prescriptions through CURES?

Erika replied that the only way we would know is through the submission of a complaint. We do receive complaints from all different sources; patients, family members, other licensees, emergency doctors who run CURES on a patient in the ER, RN's, triage nurses, pharmacists. Since everyone is required to run CURES on their patients, they do sometimes prompt the initiation of a complaint. We have also received complaints directly from the DEA or investigators who are already investigating a case. Ultimately, it's through the submission of a complaint which prompts us to investigate.

Claudia Mercado asked if there are any safeguards within CURES that could potentially set an alert for the Board if CURES notices a high increase in prescribing. Is that a possibility?

Erika said there are no alerts that directly notifies the Board, but CURES is a database that's been developed for the physician, and there are alerts within the system to alert the physician or any health provider who is prescribing to a patient. There are safety mechanisms within the CURES database that prompts a physician to be alerted. An example would be a patient who is obtaining drugs from more than one physician at a time. A "doctor shopping" situation. Or someone who is receiving more than the 90mg. morphine milligram equivalent (MME).

Claudia thanked Erika for the information.

Dr. Buhari requested public comment.

No comments.

A break was held and roll call was taken. Quorum present.

8. Discussion and Possible Action Regarding Hearings Pursuant to Business and Professions Code sections 2307(d) and 2452 and Section 2 of the Osteopathic Act– Michael Kanotz, Attorney III, Legal Affairs, DCA

Michael Kanotz, OMBC's Legal Counsel, discussed the manner in which the Board has hearings for petitions. Licensees who have had their license revoked have the ability to petition to have their licenses reinstated, and those on probation have the ability to petition to modify the terms of probation or to terminate their probation early.

Pursuant to Business and Professions code section 2307(d), the petition can be heard by the Board acting as the agency itself, or it can be heard by an administrative law judge.

When heard by an ALJ, the Board reviews that decision, as it does any other disciplinary decisions, and must respond within 100 days.

There are pros and cons to each approach.

The Board has traditionally heard petitions sitting as the Board itself, with an ALJ presiding over the hearing. The petitioner appears in person or by video conference, the Deputy Attorney General is present, as well as the petitioner's attorney, if he/she has one. The hearing would then be conducted in front of you, as a Board.

The pro to this method is that the Board has the ability to ask questions and evaluate the petitioner's thoughts on rehabilitation. The con is that it requires a substantial amount of time at the Board meeting.

To have an ALJ hear the petition on their own saves time at a Board meeting, but you lose the ability to observe the petitioner in person and ask questions. The Board must still review the ALJ's proposed decision. The Board has the ability to non-adopt the proposed decision, request the transcript, and discuss the matter in closed session at the next meeting to determine whether or not the petition should be granted. Potential options were discussed.

A member asked whether the decision is the licensees or the Boards. Do we provide them the option to have the matter heard before an ALJ or the Board?

Mr. Kanotz said no, we do not provide that option to the petitioner. That decision is made by the Board. With either option, their petition will be heard. An ALJ will preside over the hearing as a full Board or in a separate hearing that would happen under the administrative procedures act.

A member asked Michael Kanotz if it's a case-by-case basis whether it's heard by an ALJ or the full Board. Are we trying to decide as a whole if we are doing them one way or another, or if it's going to be done on a case-by-case basis?

Michael Kanotz replied that it could be case-by-case, at the discretion of the Board president.

A member remarked he's been in purview with some of these matters and it was a very fulfilling experience and is particularly rich for the respondent. Going before the full Board would provide a more comprehensive look at the cases. A suggestion, if there is a backlog, is to have an interim full day meeting where we can hold these meetings.

Erika said there is not currently a backlog. The purpose of bringing this before the Board today is because a lot of Boards are moving towards sending their petitions to the ALJ for hearing. To clarify, you do not need to adopt the proposed decision. You [the member]

are still given the opportunity to vote on the decision. The ALJ's are trained in these types of cases.

Mr. Kanotz explained that, if non-adopted, the petitioner has the opportunity to provide written and/or oral argument.

A member requested clarification on the process of requesting transcripts; are they received when the proposed decision is received?

Mr. Kanotz explained the process of a non-adoption and setting the hearing for oral argument. He explained that the Board has the opportunity to review all of the evidence, when non-adopted.

A member requested clarification regarding petitions; if the matter is heard by an ALJ, how would the members be informed, made aware?

Mr. Kanotz explained that they would receive the proposed decision through the mail vote process, and at that time, they have the opportunity to adopt the petition or hold it for discussion at the next Board meeting.

A member asked if the voting is based on majority vote.

Mr. Kanotz replied, correct.

A member asked what the rationale was of the other Boards to lean toward ALJ petition hearings.

Erika provided a response and Michael Kanotz suggested the pandemic may have attributed to referring more cases to the ALJ versus the Board, due to logistics and covid shutdowns.

Dr. Buhari appreciates the opportunity to look at the authenticity of the petitioner and to get a feeling towards what they are asking and whether or not it is reasonable. Things like honesty, body language, etc.

A member said if there is not a backlog, our current process provides a richer experience and would prevent the back and forth. Having a document on the screen or on a piece of paper doesn't take the place of somebody in front of you, and these are very serious matters. These are licensees that want their licenses back, and it's a huge decision. Coming forth towards the full Board is probably best, especially if there isn't a backlog.

Dr. Jensen echoes what was said by follow members. It gives both the physician and the public more transparency in the issue. It gives the opportunity to really understand what's going on and to have both sides truly be heard and to respect the severity of the issue at hand. If we have no backlog, this is a more thorough process. She agrees with Dr. Buhari that she likes being able to ask questions and interact with the petitioner.

Denise Pines agrees that the patients, patient advocates, and the people that come to our meetings have a right to be here in person and that she would move for non-adoption.

Claudia Mercado makes a motion to keep the same process and allow the petitions to be heard with access to the public. Claudia makes a motion to non-adopt.

Dr. Buhari and Gor Adamyan is in agreeance. Dr. Buhari begins set out the phrasing of a potential motion.

Mr. Kanotz chimed in to say he does not think a motion is needed to accomplish keeping the meetings the same. To just move forward with keeping the meetings the same. A vote isn't necessary in this instance.

Dr. Buhari called for public comment.

No comments.

9. Discussion and Possible Action to Initiate a Rulemaking and Amend Sections 1635, 1636, 1638, 1641, and 1659.31 and Repeal Sections 1639 and 1640 in Title 16 of the California Code of Regulations (Requirements for Continuing Medical Education (CME) Approval, CME documentation, Sanctions for Noncompliance, Citable Offenses) - ***Terri Thorfinnson, Program Manager and Kristy Schieldge, Attorney IV, Legal Affairs Regulatory Review Unit, DCA***

Kristy Schieldge, Attorney IV with the Legal Affairs Regulatory Review Unit, explained her role as a second-level reviewer. When the regulations council sends a proposal forward for review, she looks at it as a second eye reviewer and identifies any issues before bringing it before the Board. She has been working diligently with staff on the current proposals, and she recommends that the members take action on the proposals brought before them today.

The regulations brought before the Board were originally adopted in 1988. There have been many changes to the statutes and laws since then. Changes were made to get up to speed on the law changes and the way CE is accredited. In addition, where regulations might be cross-referenced, those sections were added to the proposal because the Office of Administrative Law will look to see how these changes will impact the other provisions in your division, and so several sections were added that will need to be revised to be consistent with current practice and the way the law is currently written. Kristy explained some changes with continuing education and accreditation.

Dr. Buhari requested comment from members of the Board.

Claudia Mercado asked if there is anything else they should be considering that makes it necessary to take action on this today.

Kristy replied that the regulations were first adopted in 1988 when there were no statutes to implement continuing education programs. At that time, staff developed the program from the ground, up. The law was amended in 1989, changing the requirements of CME courses to be accredited by the American Medical Association and the American Osteopathic Association, and it specified which category you had to accept in the way of continuing education coursework. The regulations were never revised to recognize those changes, and so, your regulations are currently inconsistent with the way the statute is written. Other statues have also changed since 1989, and the regulations need to be updated to conform. Historically, staff has dealt with the gaps in the laws and regulations by coming up with their own processes and procedures. We really need to get those in regulation because we have a duty to the public to let them know how we're processing CE and what standards they must meet. Those are currently not in the regulations. This regulatory proposal will include all the processes and procedures on how they are processing proof of satisfactory completion, what course work information is looked for when reviewing compliance, and all of this, out of fairness and notice to the public, should be in regulation. These changes are necessary to get up to date and current with the way the program is currently operating and with the way the law has changed over the past 50 years. We are at the beginning of the process. If they see anything that should be changed, it can be worked on at this meeting. If approved, it would be the beginning of the process of departmental review. It would then go out for public comment for 45 days to provide comment and any concerns they have with the proposal during that 45-day period.

Terri Thorfinnson explained to the members the difference between a statute and regulation. As the statute changes, it does so automatically without having to do a regulatory change. Trying to shift from 100 percent manual review of all CMEs prior to renewal to a system where a licensee can go online and fill out a form that certifies yes, I've completed all the requirement and I certify that everything I say is accurate. Then they submit the form, pay their fee, and renew. Will save a lot of time. Still gives the Board the authority to audit and to check for compliance.

1635, the section that specifies the CME requirements for continued licensure requirements, is updated to reflect statutory changes from throughout the years. It entails about which individuals would be exempt to the CMEs.

1636, documentation section, lists requirements and acceptable documentation for CMEs and also authorized the Board to audit licensees for CME compliance.

1641 wasn't changed much. This is the sanction section for non-compliance.

1659-31, cite and fine section. Added 1641 to that.

1638, section that provides exemption for inactive status for licensees. No changes to that. Subsection E refers to 1635e which no longer contains the wording on the categories that it's referring to. Deleting section c only.

1639 defines CME categories. Going with the statue for that definition so 1639 is obsolete and she recommends deleting that section

1640, section that provides the Board with the criteria and approval of CME programs and CME providers. Haven't used this authority. Board looks to the AOA as the expert and we will continue doing so. She recommends deleting this section.

Added description to the statute for the one time mandatory 12-hour CME courses that needed to be completed by a certain timeframe.

Also included a requirement that the legislature added to our statute which added a risk of addiction associated with use of schedule 2 drugs to be completed every renewal cycle. This requirement is different than the one the licensees have to complete every cycle.

Also new in 1635 is added details about which individuals would be eligible for an exemption to the CMEs, different than the statue that provides inactive licensees an exemption. This is for ones that want to stay active, want to be exempt, and we have never really defined those. We attempted to in the last change but we're providing a lot more detail, including a definition of direct patient care. The areas we are calling out, pathologist and radiologist would be exempt, but what we didn't include was licensee not engaged in direct patient care nor provide patient consultation, or licensees that do not reside in California.

Kristy clarified that this is for exemption from the one-time 12-hour requirement and these exemptions are derived from statues, so we don't have the ability to really change those categories of exemption. We are just providing additional detail about what direct patient care means and we're putting all the exemptions in one location so the licensee can easily find the list of exemptions in one place.

1636, required documentation, is where we put in the authority to audit, and changed the word from report to documentation. The definition is intended to provide licensees notice of what information is required. The section prior to that is also notice to what requirements need to be met. Specific language about what is required and when. Timeframe for licensees, when they received contact for an audit, they need to respond to the Board within 65 days and retain the documents for 6 years. Their electronic signature certifies the truth of what they are putting on the form. Under penalty of perjury, the statements and disclosures will be used in the audit to determine compliance.

Kristy added that this information was previously on a form. The value of putting the information in a narrative statement format, is that you have the flexibility of allowing people the flexibility of submitting the information multiple ways; there's no one specific way. Allows for more flexibility and meets the needs of self-certification. The idea is to move from the investigative pre-review of CE to a self-certification format where they self-certify and then audit to verify. This is pretty standard across the department as the way the Boards manage CE compliance. Getting rid of the form frees you up from being tied

to a specific format and allows you to implement different formats. Allows licensees multiple ways of meeting the requirement and not have to keep updating the form.

1641 changed any references to 1635 because they are no longer accurate. Noncompliance is considered unprofessional conduct. Cite and fine was added as a possible consequence for noncompliance. What's new in the language is that it was limited to 1635 and the way we are wording it is that even violations of 1636 also would constitute a violation. Reason is to create accountability. It's important to have a strong enforceable audit process so that there are no ambiguities. They know what the process is and what they need to complete it.

1659 added 1659.30, cite and fine section, giving us the authority to cite and fine. Terri then provided the Board with an overview of the CME requirements and exemptions.

1636, medical education documentation. Subsection b uses the word disclosures, documentation. Documentation is the information we are requiring to demonstrate compliance. Disclosures is in totality all of the communication including emails, back and forth clarification, that is also going to demonstrate compliance with the requirements. Terri then provided the Board with an overview of the specific requirement listed in the statute.

1659.31 citable offenses, added the underlined section to the second paragraph: "…or upon any other grounds listed in section 1641." This gives us citation authority for CMEs. Also, regarding citations, they recommend that we move away from listing every single section and move towards paragraph form, which will be more inclusive and still gives us the same amount of authority. Cross reference made to 1636 citation regulation that specifically says for a violation of the CE requirements, the executive director can also issue a citation. Kristy and Terri also provided the Board with background as to why, for future clean-up of regulations, it is recommended to move towards this form.

Terri then asks Kristy to propose the motion for the Board's consideration, but first Kristy asks if there are any questions from Board members.

A member asked, have we clarified the CME reporting period? It's been a major source of confusion in the years past. Would like clarification that the reporting period is 2 years immediately prior to expiration, not the last two calendar years.

Terri said they got rid of the calendar-year misalignment in one of the prior statutory changes, so now the CME renewal cycle and the renewal are identical.

A member asked a question related to teaching exemptions and commented this may be an AOA question.

Kristy said that is an AOA question, and provided some additional background.

Dr. Buhari commented that his understanding is that physicians who teach medical students are not exempt from CMEs, but that is considered CMEs.
Kristy and Terri responded to the comment and addressed potential issues related to documentation.
Dr. Buhari asked, the 12-hour CME course in pain management treatment of the terminally ill /dying; is that regulation every 2-year cycle?

Kristy replied that it's just one-time 12 hours within 4 years of initial licensure and provided additional detail related to the requirements.

Dr. Buhari requested comment from members of the Board.

Claudia thanked Terri and Kristy for their hard work and attention to detail.

Kristy made the recommendation to, if the text is acceptable as presented, approve the proposed regulatory text to amend sections 1635, 1636, 1638, 1641, and 1659.31 and repeal section 1639 and 1640 as set forth in the meeting material, and direct staff to submit the text to the director of the department of consumer affairs and the business consumer services and housing agency for review, and if no adverse comments are received, authorize the executive director to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the packet, and set the matter for a hearing if requested. If no adverse comments are received during the 45-day public comment period, and no hearing is requested, authorize the executive director to take all steps necessary to complete the rulemaking and adopt the proposed regulations as noticed.

Dr. Patel made a motion as stated by legal counsel, and it was seconded by Ms. Denise Pines.

Dr. Buhari requested public comment.

No comments.

Motion – Dr. Patel
Second – Denise Pines

- Aye – Mr. Adamyan
  Dr. Buhari
  Dr. Jensen
  Ms. Mercado
  Mr. Moreno
  Dr. Patel
  Ms. Pines

- Nay – None

- Recuse – None
- Absent – Michael Kim, D.O

The motion carries.

10. Legislation Report- Terri Thorfinnson, Program Manager

A. Bill Tracking List

B. 2022 Legislation Implementation

- **AB 657 Expedited licensure for applicants providing abortion services**
- **AB 1636 Denial/Revocation of licenses for Registered Sex Offenders**
- **AB 1954 Prohibition to Deny Treatment and Medication to Patients Using Cannabis**
- **AB 2098 Unprofessional Conduct: Dissemination of Misinformation related to SARs COVID 19**
- **AB 2626 Prohibit Suspension or Revocation of Physicians based solely on their performing abortion**
- **SB 731 Criminal Records Relief**
- **SB 923 Gender Affirming Care**
- **SB 1237 Expands Military Service definition of Act Duty to Include Out of State Licensees**
- **SB 1443 Elimination of Prorated License fee and birth month initial license cycle for OMBC**
- **SB 1278 Patient Notice of Open Payments Database for Payments by pharmaceutical and durable medical equipment companies to Physicians**
- **AB 1120 (Irwin. Chapter 685, Statutes of 2022) Clinical laboratories: allows certified phlebotomy technician to perform blood draws through a peripheral venous catheter under the general supervision of a physician or registered nurse**
- **SB 189 Committee on Budget and Fiscal Review. State Government**

Terri Thorfinnson gave an overview of agenda item 10A, the Osteopathic Medical Board of California Bill Tracking List 2022, and agenda item 10B – Legislation Implementation, both of which were included in the Board meeting material.

Dr. Buhari requested comment from members of the Board.

Claudia asked, for future reference as these bills come us, is there any way for us to be more engaged? To see what staff is working on, on a regular basis? Can you explain to us how the legislation process works?

Terri explained the legislative process. Also, said she'd like to have more time to dedicate to legislative work.

Claudia mentioned that she is involved in legislative work with other organizations, and she has seen bills that mention the Medical Board, and then she reads through it and it doesn't mention OMBC. So, what she's hearing, is that we need to actively inform the legislative body of who we are as an entity and why including us in their bills or asking us for a position could be advantageous so that the process is smoother and more just.

Erika replied that these are some of the ideas for other positions we are looking to bring to the Board. We are working with our budgets department to see if we can bring a retired annuitant on to assist with the legislation and regulation of the Board. We have regulatory packets that we need to bring into compliance, and we also have our disciplinary guidelines that haven't been revised for several years, so that also needs to be updated.

Claudia thanked Erika.

Dr. Buhari requested comments or questions from members of the Board.

Michael Kanotz, legal counsel, added a brief legal update regarding SB1237 and the licensing of military personnel and their spouses. On January 5, 2023, President Biden signed HR 7939, the veterans auto and education improvement act, 2022, and one of the many things that that law does is create license portability for professional licenses for service members and their spouses. That will supersede a great deal of our law that has to do with military licensing. It's going to allow service members and their spouses to practice with a license provided another state with certain requirements that they submit to the licensing authority in the state where they are practicing, in terms of discipline and other things.

Dr. Buhari requested public comment.

Holly Macriss, I'm with OPSC. I'm the executive director. One question I have is, the legislative work that you are doing for this Board, how are you interacting with OPSC, seeing as that's a very big part of what we do as well. I see a lot of partnerships being able to be had here seeing how our side is fighting for patient care and your side is fighting for patient care and physicians. So, I just want to know if that's something that's part of the plan? To engage OPSC?

Erika replied that those were great questions, and she thinks this is great for our quarterly meetings. We can definitely bring this to the agenda and discuss it in the future.

Machiko took roll after lunch. A quorum was established.

11. Intergovernmental Relations Reports and Administrative Services Update

A. DCA Update – Judie Bucciarelli, SSM I, Board and Bureau Relations, DCA

B. Budget Update – Heather Robinson, Budget Office, DCA

a. Budget Update

C. **Strategic Planning Objective Update – Machiko Chong, Executive Analyst, DCA**
D. **Strategic Planning Update – Solid-Planning, DCA update – Judie Bucciarelli, SSMI, Board and Bureau relations, DCA**

DCA Update – Judie Bucciarelli, SSM I, Board and Bureau Relations, DCA

Erika announced a change to the agenda. We have Melissa Gear here with us today.

Melissa greeted Erika and members of the Board and gave an introduction of herself. She announced the appointment of Yvonne Dorantes as the assistant deputy director of board and bureau relations and the appointment of Kathleen Nichols as the chief of the Division of Investigations. Kathleen was sworn in on December 5, 2022. Ms. Nichols has extensive law enforcement experience, with over 25 years of investigating and supervisory experience. The department has begun the process of filling the deputy chief position in the health quality investigation unit.

She also shared an update on the DCA diversity equity and inclusion steering committee. The department established this first diversity equity and inclusion steering committee, or DEI committee, to guide the department's Equity Strategy Initiative and Action Plan. The DEI committee held its official kick off meeting on November 9, 2022, and it's second meeting will be held later this month. Additional resources will be forthcoming that all Boards will be able to use and incorporate into their strategic plans, recruitment processes and etcetera. The committee will concentrate on 3 key areas: Workforce, to help find and keep diverse talent; workplace, to actively educate leaders and employees to raise awareness and foster an inclusive culture, and marketplace, to be sensitive to the diverse background and perspective of consumers, applicants, and licensees.

Melissa provided an update as to the strategic plan, shared the new DCA logo, and provided information regarding board member appointments. The next update is related to strategic planning and can be found in the Board meeting material. Melissa provided updates on Board member travel and training and discussed Board member training requirements. She announced Board President and Vice President training, which will take place on February 22, 2023. This virtual two and a half hour training will outline the role of a Board president including understanding the scope of the role managing Board members and performing administrative duties.

She announced that the end of Covid-19 state of emergency and waivers is February 28, 2023. The state of emergency and associated executive orders will end on February 28, 2023. Upon the state of emergency ending, active waivers that were issued under the authority of the state of emergency and executive orders will also expire. She reminded the Board of the annual filing of form 700 requirement and associated deadlines. She also announced that Board Member Orientation Training will be held virtual on March 22, 2023 and possibly in person later this year.

Dr. Buhari requested comment from members of the Board.

Claudia thanked Melissa for her presentation. She wants to advocate here for the Board in terms of getting our website redone. If we can do anything possible to get the website done. The request was first made a few years back. She says we can create more visibly for the profession and increase interest in the profession.

Melissa thanked Claudia and said she will be sure to bring that back to her senior staff and make she they have this on the radar.

Dr. Buhari requested public comment.

No comments.

Budget Update – Heather Robinson, Budget Office, DCA

Heather Sand, formerly Heather Robinson, budget analyst with the DCA budget office, provided an update on agenda items 11b, the Boards fund condition, which gives a 4-year view of the Boards fund, and can be found in the Board meeting material.

Dr. Buhari requested comment from members of the Board.

Claudia asked where in the report she can find information on the additional staff to be brought on Board.

Erika replied that the funds being used to fund the limited term positions are coming from funds that were already allocated for staffing. As mentioned in my report earlier, the .5 medical consultant position will not be filled so that we can fund our limited term manager. So, the funds are already part of our budgetary conditions. In addition, she is going to be working on the BCPs at the same time to make those positions permanent. The other position mentioned is the retired annuitant and again that would be utilizing funds from that.5 consultant position that we already have allocated.

Claudia thanked Erika.

Dr. Buhari requested public comment.

No comments.

Strategic Planning Objective Update – Machiko Chong, Executive Analyst, DCA

Machiko gave an update on the strategic planning objective, which can be found in the Board meeting material. Machiko highlighted some goals that the Board has met, versus those we are still trying to accomplish.

A member thanked Machiko and mentioned that our strategic plan will be ending this year in 2023. When do we need to start preparing for the next revisions or how do we want to proceed?

Machiko said this will be discussed in the next presentation.

Dr. Buhari requested any other questions from Board member, being none, he requested public comment.

No comments.

<u>Strategic Planning Update – Solid-Planning, DCA update – Sarah Irani, SOLID Strategic Business Analyst & Facilitator</u>

Sarah Irani, SOLID Strategic Business Analyst & Facilitator, provided an update on the Strategic planning overview, which was included in the Board meeting material.

Sarah informed the Board that strategic planning consists of 4 questions: where are we now, where do we want to be, how do we get there, and how are we going to measure progress? She provided the Board with detail about what to expect when developing the strategic plan. She also shared the Strategic Planning Roadmap that outlines each of the steps mentioned in the report, in a timeline format. Step 1, set up initial meeting. Step 2, environmental scan. Step 3, planning session. Step 4, create and finalize plan. Step 5, action planning.

Dr. Buhari requested public comment and comment from the members of the Board.

No comments.

12. Update from the Division of Investigation's Office, *Kathleen Nicholls, Chief of the Division of Investigation, DCA*

Kathleen Nicholls, Chief of DCA's Division of Investigation, provided an update on the Health Quality Investigation Unit (HQIU), which was included in the Board meeting material.

Kathleen read the mission of the Division of Investigation. She then reported that, as of January 1, 2023, HQIU has 21 investigator vacancies, which is a 25 percent investigator vacancy rate. They continue to be diligent in their recruitment process. The second week of their four-week mini academy for newly hired investigators took place last week. This specialized training for investigators includes detailed modules for all different case types that they will investigating. Fourteen new investigators are attending the mini academy. The remaining weeks will take place in January and February of 2023. All sworn investigators have attended training pursuant to SB 230. Kathleen then provided an overview of the training topics and information related to the number of investigators who have completed the training. All investigators and supervisors received training on

investigations going to the expert procurement unit for expert review in September and October of 2022. This training focuses on the quality of our investigations and included details of the process for ensuring that all vital information is obtained before the case is sent for expert review. In the past, HQIU sworn investigators handled the expert process for the cases referred. Given the goal of reducing investigation timelines and workload for sworn investigators, they developed a new unit using existing HQIU positions for analysts to locate, screen, prepare expert packets, and receive written opinions from experts. The unit is staffed with an SSMI and 5 analysts. As part of the review process, the EPU manager reviews and ensures all the records are certified and all pertinent information is included. The HQIU deputy chief also reviews all of the cases submitted for expert review, and this combined in-depth review has improved quality standards for our investigations. Shifting this part of the process to EPU allowed the investigators to focus on investigating remaining cases assigned to them and has resulted in lower case load for sworn staff, which was needed.

They created a new non-sworn unit for HQIU as part of the enforcement support unit at DOI headquarters. They converted 3 sworn investigator positions to non-sworn special investigator positions to work the less serious, less complex cases for the Osteopathic Medical Board, the PA Board, and the Podiatry Board. The unit was formed in August of 2022. They currently have 2 of the 3 investigator positions filled and will be interviewing for the third position in the coming weeks. This will assist the Board in reducing investigator costs and let the sworn investigators focus on the more serious cases. Kathleen then provided details related to the monthly communications with Board staff.

Dr. Buhari requested public comment and comment from members of the Board.

No comments.

13. Update from the Attorney General's Office – *Gloria Castro, Senior Assistant Attorney General of the Health Quality Enforcement Section Civil Division, Attorney General's Office*

Gloria Castro, Senior Assistant Attorney General, explained that the Health Quality Enforcement Section of the Attorney General's Office, is given the task of managing 8 health care oversight agencies exclusively all dealing with medical and healing arts. Of note, this quarter for the attorney general's office, the attorney general's annual report on accusations prosecuted for the Department of Consumer Affairs client agencies was published on January 1, 2023. The report is available on the attorney general's website (http//oag.ca.gov -publications). The AGO meets frequently with The Office of Administrative Hearings to assist them in managing OMBC's litigation calendars and work in front of the administrative law judges. They continue to work with the Department of Consumer Affairs HQIU and will likely begin working with the non-sworn unit that they have established, as well. She introduced Karolyn Westfall.

Dr. Buhari requested public comment and comment from members of the Board.

No comments.

14. Enforcement Process Presentation – *Erika Calderon, Executive Director, Kathleen Nicholls, Chief of the Division of Investigation, Karolyn Westfall, Deputy Attorney General*

Executive Director, Erika Calderon, gave a presentation on the OMBC enforcement program and process. Erika shared the mission and authority of the Board for enforcement. The consumer complaint form can be found at www.ombc.ca.gov under the consumer tab, complaint. Additional instructions were added to this consumer complaint form allowing the public a little bit more access to knowing what it is that we need to conduct our desk investigations. We added more spacing to allow for more details of the complaint, and also instructions for them to include additional pertinent information that they may have in their possession at the time of submission that will be relevant for our desk investigations. We also added our releases, which were not attached previously. They were separate complaint documents in the past. By doing this we decided that it would save us some processing time of going back and forth. In addition, it allows us to conduct more investigations than usual. Sometimes it is difficult to continue the desk investigations because we cannot obtain a medical release. Sometimes consumers may file a complaint, but then afterward go silent for a while, so, by informing them upfront of the documents we need to proceed, we would save some time and also allow for more consumer complaints to go through.

Erika explained the phases of the enforcement process in more detail. She also explained the complaint review process. She explained that part of the triage portion of the process is to look for high priority cases. She likes to move those along very quickly. She explained which cases are expedited, and why. She explained that cases are sent for consultant review. Possible outcomes after the initial medical consultant review: we can issue a citation and fine for minor violations, or refer the case for further investigation to DOI, and in situations where it’s found that the allegations have no merit, the matter is closed.

Kathleen Nicholls explained the investigation process. The first thing that’s done, is, the investigator reaches out to the complainant, and that may or may not be a patient. This should be done within 30 days of receiving the case for referral. After witnesses are interviewed, in most cases they would request medical records. They obtain the records either by a release or a subpoena or a search warrant. Must have one of the 3. If the patient does not sign a release you have to have good cause for a subpoena.

The case would then be sent to their in-house district medical consultant who would review the case up to date and then provide an opinion on if there is good cause and if there is, then they subpoena the records. A lot of times the facilities do not provide the records after the subpoena. They would then refer that matter to the attorney general’s office for enforcement of that subpoena. AGO would work with the medical consultant drafting declarations and going to court. Once all of the records are received and they have everything they need, the case is reviewed by their district medical consultant in

preparation for the subject interview. They help translate the medical issues for the investigator so that it is very clear before they interview the subject, what are the concerns, where are the parts of the records to focus on.

The next step is to interview the subject physician. They prefer a voluntary interview. They send out a request to schedule an interview at a mutually agreed upon date. Occasionally they do not get a lot of cooperation and things get delayed, so at a certain point, they have the ability to issue a personal appearance subpoena to that physician requiring their attendance at the interview.

Once the physician is interviewed, the case would then be submitted for expert review in the same specialty as the physician. In the interview of the physician, if more information comes forward either by the physician stating there were other documents, or other witnesses present, so sometimes additional follow up would be needed after they interview the doctor. Sometimes this involves going back to the patient or the complainant to verify or obtain additional information with the goal of obtaining the whole picture. The expert can then review the case fairly with all of the information that they need.

Once the expert report comes back, did the expert finding any departures from the standard of care? Were they simple departures? Extreme departures? Do they have clear and convincing evidence to move forward? They need clear and convincing evidence to file an administrative case. For criminal cases, they need a higher burden of, beyond a reasonable doubt. If they think there's enough, that would be their recommendation to the Board when they submit the case back. They will provide a recommendation, but it is ultimately up to the Board to decide. Also, in consultation with the AGO, with what their opinion is of the evidence that we've gathered. Kathleen discussed the types of violations/allegations such as: gross negligence, incompetence, repeated negligent acts, sexual misconduct, over prescribing/violating drug statues, aiding and abetting, physician misconduct, physician mental/physical illness, record keeping violations. She mentioned there have been a lot of aiding and abetting cases lately.

She then discussed the possible investigation outcomes, such as cite and fine, refer for criminal action with the district attorney, public letter of reprimand, or refer to the AGO to review for possible disciplinary action. Some interim actions can also be done. PC23 is when there's charges filed in state court, where we can actually go in at that hearing and ask the judge to suspend the physician's license as a condition of their bail. It is required that the subject be given notice. An interim suspension order is when a case is so serious that we feel the public is at risk, they are a danger to the public. If they have an expert opinion to support it, the Board can pursue an interim suspension order. It also includes a petition to compel, such as if we had information that a doctor is impaired, but they refused to give us a urine test or participate in any evaluations, if there's enough evidence, the Board can move forward with a petition to compel that exam. Then of course if there's no evidence that is substantiated at the end of the investigation, the other option is to close the case.

Kathleen provided an update on their new non-sworn unit, which was created with the purpose of helping the smaller Boards that didn't really have the bandwidth to have their own non-sworn investigations as part of the Board. They converted 3 sworn positions into non-sworn so they can help assist working some of the less serious and less complex cases. Most prescribing cases go to the sworn investigators for various reasons. The non-sworn special investigators are highly trained and very capable of doing quality, thorough investigations. She also mentioned this unit has the added bonus of it being a potential cost savings for the Board since the hourly rate is less than the sworn investigators. Looking forward to developing that unit and seeing how it works for the Board. Right now, it appears that the 3 allocated positions are enough for the workload. As we move forward, she'll be assessing that as well, just to make sure that their caseloads stay reasonable.

Karolyn Westfall, Deputy Attorney General from the San Diego office, gave a presentation on the disciplinary process. The information can be found in the Board meeting material posted on our website. Karolyn serves as the OMBC liaison. She fields questions from the executive director and her staff on legal issues pertaining to enforcement actions. After an investigation is complete, the case is submitted to her office for legal review. They may review it and send it back requesting additional investigation before they can meet their burden of proof, or they may recommend some lower sanction like a cite and fine or a public letter of reprimand for more de minimis allegations, but usually what they do is accept the case and file an accusation when they believe there to be clear and convincing evidence to prove the physician engaged in unprofessional conduct.

The accusation must be filed before the expiration of the statute of limitations, which for the most part, is 3 years from the date the Board learned of the event, or 7 years from the event, whichever is sooner. Unless there is some other interim order issued, like a PC23 or an ISO issued, the accusation would be the first public document that is posted on the Board's website. The accusation is served upon the licensee, but it is posted on the website also to put the public on notice of the charges that have been levied against the physician. The accusation is the legal document that is laying out, not just the charges, but the jurisdictions to all the relevant statutes that are at play in the case.

A medical license is considered a person's property, and the government, the Board, can't take the property without providing the due process of law, so the accusation and the process that follows is essentially providing that due process to the licensee, giving them an opportunity to be heard before their license is taken.

After we file the accusation, we wait for the licensee to file a notice of defense. This is where they are contesting the charges. If they don't file a notice of defense, after a certain period of time, the Board can proceed by default to revoke the license. If a notice of defense is received, they begin preparing the case to go to hearing, so they exchange discovery, they attempt to resolve the case short of hearing, so the process of settlement negotiations would occur between the attorney general and either the licensee directly or their attorney if they've hired one.

Any settlement offered has to be approved by the executive director. If they are unable to reach a settlement, they proceed to a hearing in front of an ALJ at the office of administrative hearings. Our hearings are very much like any other court trial. There is no jury, but there is usually an attorney on both sides, and they comply with the rules of the administrative procedures act. Witnesses are called, they admit evidence, and at the conclusion of the hearing, the ALJ issues a proposed decision, which is then submitted to the Board to vote on. The ultimate outcome in any case is up to the Board. All stipulated settlements and proposed decisions are presented to the Board for your consideration. After reviewing all of the documents submitted to the Board, the Board makes the ultimate decision in the case. the Board can adopt the proposed stipulation or proposed decision. Adoption is usually the common result, but the Board can also reject a stipulation and send it back to the DAG and ask them to modify the offer or send the case to hearing. The Board can reject the proposed decision as well. The Board can make minor adjustments to the decision, the Board can send it back and ask that more evidence be taken, or the Board can non-adopt and consider the case on the total record. That is when the Board would receive the transcript and ask for argument from both sides, written and/or oral, and make the ultimate decision after the Board has considered all of that information.

Once a decision and order has been issued by the Board, the licensee then has a couple options. They can accept the decision and move on, or they can petition the Board for reconsideration. Usually, the request for reconsideration is filed by the licensee with a request to stay the decision, and the Board usually would stay the decision for a period so that they can consider that petition. The Board can then grant the petition and file a new decision, or they can reject the decision and the original decision would stay in effect. Once that happens, the licensee can accept the decision, or they can appeal the decision at the superior court, and that process is called a writ of mandate. The superior court can then grant the writ or deny the writ. If they deny the writ, the licensee can accept the decision and move on, or they can appeal that decision again in the court of appeals, which would involve a very similar process to what happened in the superior court, just at a higher court level. Eventually, the Board reaches the decision and order that's final.

The decision includes the outcome of the case. Some possible outcomes are dismissal of accusation, revocation or surrender of the license, but more often than not, it contains an order of probation with terms and conditions. The highest priority of the Board is public protection, however, when it is not inconsistent with public protection, the Board is also supposed to attempt to rehabilitate the licensee. The terms and conditions of probation are specifically designed to accomplish both of those goals: to protect the public and to rehabilitate the licensee.

The common terms of probation where we are seeking to rehabilitate would be educational programs, there might be prohibited practices, in less egregious sexual misconduct cases, we would prohibit the physician from seeing female patients, for example. You might see prescribing restrictions where they can only prescribe a certain level of drugs on the schedule. You might request a practice or billing monitor. But

importantly, every case should include cost recovery. The licensee is essentially on the hook for costs of investigation and prosecution of their case.

In the more egregious cases that don't raise to the level of revocation, we would be seeking a temporary suspension of their license for a specific period. In the less egregious cases we would seek a public reprimand. All disciplinary outcomes that result in a public reprimand up to revocation are posted on the Boards website. In the very rare case when we determine we can't meet our clear and convincing burden of proof, or if for some reason it's determined that no discipline is warranted against the physician, an accusation can be withdrawn or dismissed.

Erika added that we do report to the Federation of State Medical Boards and the National Practitioners Databank. We are hoping to establish a newsletter in the near future which outlines any and all disciplinary actions that we to be taking. We are also hoping to revamp our website to provide more transparency to our consumers. She pointed out though that the Board is mandated to upload the documents to the physician's profile on our website under administrative disciplinary actions and provided additional detail as to how to locate the documents.

Dr. Buhari thanked Erika for her presentation and said they have been requesting this for a while, in particular, the website and what a complainant goes through to get their complaint uploaded and the process.

Dr. Buhari requested comment from members of the Board.

A member asked, if at any point a complainant decides to withdraw their complaint, and your office is advancing in the investigation, does that mean that case will be closed? Or is it on a case-by-case basis?

Kathleen Nicholls replied that from the investigation side, if a patient decides they want to withdraw their complaint, we will continue to move forward because a lot of times, the departures are in the medical records, and you wouldn't need the patient testimony. However, if it were a behavioral issue or sexual misconduct, you are going to need that patient's cooperation in order to be successful. So, we do not stop the investigation, we don't close the complaint, but at the end of the investigation, we then make an assessment as to whether or not we have enough evidence to proceed without the patient's cooperation.

Karolyn Westfall added that her position would be quite similar. We usually don't need the patient's cooperation in a case. The evidence is usually contained within the medical records themselves. Even if it was a sexual misconduct case, if there are witnesses, if the doctor admits to any wrongdoing, we will certainly proceed. At the end of the day, it's a matter of, if we can prove unprofessional misconduct by clear and convincing evidence, and we look at the totality of the evidence available to us to see if we can prove it.

Erika also added that, at the Board level, after the case has been vetted and there's enough evidence to pursue and investigation, that's where Kathleen and Karolyn come into play. However, there are some cases where a complaint is filed, but then resolved the next day and in those cases as long as there are no allegations that are concerning they may close it, for example the doctor was running late or rude, as long as there are no other concerns in those cases they may close it.

Dr. Jensen wanted to echo what Dr. Buhari said. They have been asking for this for a while and the transparency and the clarity for us so we know the process better, as well as all of the work with the website, trying to streamline some of the forms, such as the release, and everything that you have been discussing earlier, that really helps the public to be able to proceed with any complaints that are there and know where they are in the process and what's going on. She thanked Erika, Kathleen, and Karolyn for their presentations.

Dr. Buhari requested public comment.

Public member, Selena Alvarez, is given 2 minutes to speak: My name is Selena Alvarez. I am from Bakersfield, and I am a volunteer with Consumer Watchdog. I have suffered immensely. My doctor ignored my most extreme complications to my pregnancy, causing me to deliver my severely premature baby girl. My baby was air lifted to another hospital where I waited for months, not knowing if she would survive, but my baby girl did survive. They saved her. My beautiful baby girl will struggle with her injuries from her lifelong harm, and it has been heartbreaking to watch her struggle. My daughter cannot walk. She is on a feeding tube, and she will need 24-hour care for the rest of her life. This could have been prevented. My daughter should not have to endure this. I was so busy caring for her during the time that she was born, that I did not know about the filing of a complaint until I learned from it, and then I filed a complaint for my daughter. My daughter is now 8 years old. She is my miracle child. First your Board tried to tell us that it was not my OB's fault; that it was the pediatrician's fault. My advocator helped me fight that. Then, although we were told that my complaint will remain open, we receive a letter closing my complaint, citing that my daughter did not meet the exceptions to the statute of limitations for minor children. Children do not have a statute of limitations. They have an exception which allows them to have their complaint received and investigated until they reach age 18. [Moderator gave 15 second notice]. This Board told me that my daughter did not qualify because you claim that she was a fetus and not a minor. I will ask for you to please reopen my daughter's case and do not let the Board deny her right as a minor or any baby's rights. Thank you.

Public member, Tracy, is given 2 minutes to speak: I'm a watchdog. I came here for accountability for my child and my grandchild. It is my responsibility to submit my compliant and follow it and it is your responsibility to investigate deaths, and you are not. This Board is violating business and professions code, chapter 4, article 5, section 328, which requires that you investigate all death complaints, yet you have continued to deny my grandson the right to an investigation. I have pushed my complaint through your enforcement process for one year and eight months. I have no control number stating

that my complaint was received. This is telling me that you are not investigating his case. I am doing my part. You need to do your part and communicate with me. You need to interview me. If my case is dismissed, you need to tell me that my complaint is just sitting or not moving for one year and eight months and why. The bottom line is that my investigator with the Medical Board case lied to me telling me that it didn't matter that the two cases, the Medical Board, and the Osteopathic Board, were combined for the two doctors. Therefore, I was never interviewed by an investigator for my complaint against the osteopathic doctor. Yet this Board came to their conclusion with no investigating for me. This should be a matter that overturns the decisions. If you are denying babies the rights for investigation. Besides my grandson, you also have denied a seven-year-old daughter the right to an investigation and the right to the exception to the statute of limitations for minors. Don't be a Board that denies baby's rights. Lastly and leastly, the Deputy Attorney General is weighing on these cases prematurely requesting their closure [moderator gave 15-second warning] without entering the process. This is an issue that we request that the Deputy Attorney General's role in the enforcement process be placed on the next Board agenda. Thank you.

Public member, Monique, is given two minutes to speak: I'm from Bakersfield and a volunteer with Consumer Watchdog. Thank you for giving us the opportunity to discuss the enforcement process with you. The stats you provide tell the story of how difficult it is to get accountability for tragic deaths from this Board. I know this firsthand because this Board has given us nothing but heartache in trying to file a complaint for my grandson's tragic death. My grandson only lived for 18 hours. He weighed in at almost 5 pounds. He died due to maternal negligence. This Board would not accept my grandson's death complaint. It has been one year and 8 months since we submitted his complaint and we have absolutely no information as to where it is. What needs to change? You need to follow business and professions code chapter 4, article 5, section 328, which requires this Board to investigate all deaths and serious bodily injury complaints under the highest priority level. Give families the right to communicate with the Board. Before you dismiss a quality-of-care death or serious bodily injury complaint, you must interview the complainant or surviving family member. In doing so, you will get the additional information you need to potentially move the compliant forward. Provide us information on your physician profile. We need to know the background of our doctors. If an 805 report has been received, note that on the profile stating 805 report, loss of hospital privileges. If there's been a criminal charge filed against the physician, note that on the physician profile as well, with the actual charges. [Moderator gave 15 second warning]. We need this information to make the best decisions for our families. This board is denying rights to babies. My grandson is not the only baby whose rights to have his death investigated be denied. You also violated the rights of a 7-year-old Bakersfield daughter, claiming the statute of limitations had run on her complaint, denying her the right to have her compliant accepted and investigated up until she became of age. Our babies have equal rights as any other person whether they live for 18 hours or are still alive today. Don't be the Board that denies babies the right to investigation. Thank you.

Public member, Xavier de Leon, is given two minutes to speak: I volunteer with Consumer Watchdog. I'd like to thank Dr. Jensen for bringing this issue to the Board. Like I've said

before, the enforcement process needs to change because it's not set up to provide rights for patients. My son is a prime example of this, having only lived 18 hours, but died due to the lack of care that him and his mother received. We have fought this board to accept my son's death, and it's been just under two years since we submitted his complaint and have done everything possible, and yet still don't have a control or case number, and in my experience, this Board is denying rights for babies to have their own compliant and investigation of their death and lifelong harm. I also believe that this Board is violating the code 328, and my son isn't the only baby whose rights you have violated. Please move my son's complaint and many other families' complaints to investigation and don't be a Board that denies a baby's right to an investigation. And lastly, we can't discuss enforcement without discussing the Deputy Attorney General and how they are calling for the closure of complaints without the complaint entering the enforcement process. We're calling on the issue of the DAG to be placed on the agenda for the next Board meeting. Thank you.

Public member, Maria Ibarra Navarrete, is given two minutes to speak: I'm Maria Ibarra Navarrete. I am from San Jose, a volunteer with Consumer Watchdog. My brother died tragically due to medical negligence. His doctor committed a medication error, which led to his death. The medical facility knew the doctor failed to report the never event to me, which means they didn't report to you. They are required to report a never event. One of the problems with the enforcement process is the lack of communication with family members. I understand that the Medical Board is working on the complaint notification system. You need to implement one as well. We need more information from you. There are no email notifications when an accusation is filed against a doctor, or when discipline is taken against the license. I support the fathers and mothers on our team. You cannot deny the right to babies to have their death and lifelong harm investigated. I also support the movement to make this Board follow the law, and follow complaint prioritization guidelines, which requires you to forward all death complaints to investigation. Thank you.

Public member, Michelle Monserrat Ramos, is given two minutes to speak: Good afternoon. I am Michelle Monserrat Ramos, and I am with Consumer Watchdog. I have the honor of working with these amazing families, trying to help them navigate through a complicated and broken process. I hope we can work together to approve this process for families. You are not following business and professions code, which requires you to forward death and serious bodily injury cases to investigation. I know through my work with my team that you are closing many death complaints before they ever reach investigation. We need better communication with staff. Before a compliant is dismissed, we need staff to interview the complainant or surviving family member. I am working with our team to ensure that they are following complaints with the department of public health and other entities that back up their complaints. When we try to submit other investigation documents, please accept them. I have personally debated with staff and exchanged documents with staff for 8 months until they reopened a case. The documentation supported the complaint. I have much more to share with you that I will send in a letter. Please reopen the case for Bakersfield's seven-year-old daughter. She deserves the right to her own investigation, and she deserves the right to the exception for minors that

all other minors are guaranteed. We are here to work with you and make the enforcement process better for everyone. Thank you.

15. Election of Officers

Michael Kanotz, legal counsel, assisted with the elections for the calendar year of a Board president, Board vice president, and Board secretary. Michael Kanotz explained the election process.

He asked if there are any nominations for the Board president.

Mr. Andrew Moreno nominated Dr. Buhari for Board president, and it was seconded by Dr. Patel.

Dr. Buhari accepted the nomination and said it's an honor to serve and to serve with this particular Board.

Michael Kanotz asked for any additional nominations or discussion on the election of Board president and requested public comment.

No additional nominations or comment.

Motion – Andrew Moreno
Second – Dr. Patel

- Aye – Mr. Adamyan
  Dr. Buhari
  Dr. Jensen
  Mr. Moreno
  Dr. Patel
  Ms. Pines
- Nay – None
- Recuse – None
- Absent – Dr. Kim
  Ms. Mercado

Motion carries.

Michael Kanotz asked if there are any nominations for the Board vice president.

Dr. Buhari nominated Dr. Elizabeth Jensen for Board vice president, and Dr. Patel seconded.

Dr. Jensen accepted the nomination of Board vice president.

Michael Kanotz asked for any additional nominations or discussion on the election of Board vice president and requested comment from members of the public.

No additional nominations or comment.

Motion – Dr. Buhari
Second – Dr. Patel

- Aye – Mr. Adamyan
  Dr. Buhari
  Dr. Jensen
  Mr. Moreno
  Dr. Patel
  Ms. Pines
- Nay – None
- Recuse – None
- Absent –Ms. Mercado
  Dr. Kim

Motion carries.

Dr. Jensen expressed her pleasure in working with Dr. Buhari and the Board.

Michael Kanotz asked if there are any nominations for the Board secretary.

Dr. Buhari nominated Mr. Andrew Moreno for Board secretary, and it was seconded by Dr. Patel.

Mr. Moreno accepted the nomination.

Michael Kanotz asked for any additional nominations or discussion on the election of Board secretary and requested comment from members of the public.

No additional nominations or comment.

Motion – Dr. Buhari
Second – Dr. Patel

- Aye – Mr. Adamyan
  Dr. Buhari
  Dr. Jensen
  Mr. Moreno
  Dr. Patel
  Ms. Pines

- Nay – None
- Recuse – None
- Absent – Ms. Mercado
  Dr. Kim

Motion carries.

Andrew Moreno thanked the Board for the opportunity.

16. Future Agenda Items and Future Meeting Dates

Dr. Buhari mentioned the interstate licensing, so we'll see if we can add that. And Claudia is right, they have made a couple of presentations to us, and we never made movement on it but there were presentations from them in the past so it would be useful for them to come back and maybe have some discussion with the Board. More meaningful.

In her absence, Claudia Mercado provided Machiko with a list of recommendations for the next Board meeting. One was a briefing on the current issues facing children's healthcare and access and lack of critical care physicians statewide. More specifically, finding experts to address children healthcare issues.

Dr. Buhari said that it might be more of an informational session, as we do not have a lot of purviews in that.

A member said, regarding the interstate compact, if you need help with the speaker, let me know and I can connect you with the FSMB president. They did a pretty good talk where I work and it's a really good speaker so we can consider that.

The members agreed upon the previously selected dates of May 11, 2023, hybrid; August 17, 2023, hybrid, but tentatively being held at Western University in Pomona; and December 7, 2023, hybrid.

Another member suggested that we could consider as a Board becoming ACCME certified and pursuing that.

Dr. Buhari requested public comment.

No comments.

17. Adjournment