

MEDICAL BOARD OF CALIFORNIA

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Protection of the public shall be the highest priority for the Medical Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount.

— Business and Professions Code § 2000.1

The Medical Board of California (MBC) is a consumer protection agency within the state Department of Consumer Affairs (DCA). The primary purpose of MBC is to protect consumers from incompetent, grossly negligent, unlicensed, impaired, or unethical practitioners by responding to complaints from the public and reports from health care facilities and other mandated reporters. MBC reviews the quality of medical practice carried out by physicians and surgeons and enforces the disciplinary, administrative, criminal, and civil provisions of the Medical Practice Act, Business and Professions Code section 2000 *et seq.* MBC also provides public record information about physicians to the public via its website and individual requests and educates healing arts licensees and the public on health quality issues. The Board's regulations are codified in Division 13, Title 16 of the California Code of Regulations (CCR).

MBC is responsible for ensuring that all physicians licensed in California have adequate medical education and training. In this regard, the Board issues regular and probationary licenses and certificates under its jurisdiction, administers a continuing medical education program, and administers physician and surgeon examinations to some license applicants. MBC also oversees the regulation of licensed midwives; polysomnographic technologists, technicians, and trainees; research psychoanalysts; and medical assistants.

The fifteen-member Board consists of eight physicians and seven public members. MBC members are appointed by the Governor (who appoints all eight physicians and five public members), the Speaker of the Assembly (one public member), and the Senate Rules Committee (one public member). Members serve a four-year term and are eligible for reappointment to a second term. Several standing committees and ad hoc task forces assist the Board.

The Senate Rules Committee appointed Eserick “TJ” Watkins as a public member of MBC on June 1, 2019. He previously served as a Board member on the Physical Therapy Board of California. Mr. Watkins is the owner of The Next Level Coaching, a hybrid strength training and life coaching company, and holds a Master of Business Administration (MBA).

On June 3, 2019, Governor Newsom [appointed](#) Asif Mahmood, M.D., an internal medicine and pulmonary disease specialist at Huntington Memorial Hospital in Pasadena since 2000. He was chief of staff at the Greater El Monte Hospital from 2011 to 2012.

On July 26, 2019, Governor Newsom [appointed](#) Alejandra Casillas, M.D., an assistant professor of medicine and primary care physician at the UCLA School of Medicine since 2016. Casillas earned both a Doctor of Medicine degree and a Master of Science degree from the UCLA School of Public Health.

On July 26, 2019, Governor Newsom [appointed](#) Richard Thorp, M.D., president and chief executive officer at Paradise Medical Group since 2001. Thorp is an internal medicine physician and a member of the American Medical Association, American College of Physicians, California Medical Association, and the Butte-Glenn County Medical Association.

Also, on July 26, 2019, Governor Newsom [reappointed](#) Dev GnanaDev, M.D., to MBC, where he has served since 2011. GnanaDev has been chairman of the Department of Surgery at Arrowhead Regional Medical Center since 1989, a clinical professor of surgery at the Western

University of Health Sciences since 1995, and an associate professor of surgery at Loma Linda University since 1993. He is a member of the California Medical Association, the American Medical Association, the Society for Vascular Surgery, and the American College of Surgeons.

On October 8, 2019, Governor Newsom announced the [appointment](#) of MBC's Executive Director Kimberly Kirchmeyer as Director of the California Department of Consumer Affairs. Kirchmeyer has been executive director of the Medical Board of California since 2013, and previously served as deputy director of MBC from 2011 to 2013. Ms. Kirchmeyer's new appointment leaves a vacancy at MBC that the Board will fill with an interim executive director at its November 2019 meeting.

At this writing, the Board has two vacancies—one physician and one public member—which must be filled by Governor Gavin Newsom.

MAJOR PROJECTS

Revised Licensure Application Questions

At its May 9, 2019 [meeting](#), the Board considered revising its [licensure application questions](#) pertaining to applicant mental health. MBC's licensure and registration applications currently require applicants to disclose whether they have, at any time, received a diagnosis for an emotional, mental, behavioral, addictive, neurological, or other physical disorder or condition that impairs their ability to practice medicine safely. In April 2018, the Federation of State Medical Boards (FSMB), after researching physician wellness and burnout, published [recommendations](#) for state medical boards regarding revisions to certain questions on applications for licensure and registration. Specifically, FSMB recommended that state medical boards consider revising or excluding application questions concerning an applicant's mental health or substance abuse histories if those questions are worded in such a way as to discourage physicians seeking treatment

from disclosing pertinent information. According to FSMB, application questions should not give the appearance to physicians seeking treatment that disclosing the information is meant to be punitive instead of beneficial. To ensure compliance with the Americans with Disabilities Act (ADA), FSMB also recommended that application questions focus on an applicant's ongoing impairments and not on other previous impairments, illnesses, diagnoses, or treatment. At its January 2019 meeting, Board members shared concerns with the revised application questions and directed staff to work with a committee appointed to take up the issue and report back in May.

[\[24:2 CRLR 46–47\]](#)

At the May meeting, Executive Director Kirchmeyer shared that a Task Force made up of Ms. Pines and Dr. Lewis explored the matter, reviewed other states' applications as well as other California boards' applications, and made recommendations that are incorporated into the revisions. Ms. Kirchmeyer explained that the updates intend to eliminate open and unlimited questions and still ensure the Board can perform its role of consumer protection. After some discussion, the Board voted unanimously to approve the changes to the application as recommended.

Patient's Right to Know Act

On July 1, 2019, The Patient's Right to Know Act of 2018, [SB 1448 \(Chapter 570, Statutes of 2018\)](#), took effect. It requires physicians who have been placed on probation for certain offenses to notify their patients of their probationary status. Cases may involve the commission of any sexual abuse, misconduct, or relations with a patient or client as defined in Business and Professions Code sections 726 or 729; drug or alcohol abuse directly resulting in harm to patients or to the extent that such use impairs the ability of the licensee to practice safely; criminal convictions involving harm to patient health; or inappropriate prescribing resulting in harm to

patients and a probationary period of five years or more. According to MBC President Pines, in the [Summer 2019 Newsletter](#), the new law is explained to help patients make informed decisions about their physicians, thus boosting “consumer empowerment.” The bill arose from a legislative oversight hearing on June 18, 2018, to examine health practitioner discipline and provide Committee members information about existing requirements and potential loopholes in the law.

[\[24:1 CRLR 51–52, 56–57\]](#)

Consolidation of Postgraduate Training Regulations

At its August 9, 2019 [meeting](#) [Agenda item 24], MBC staff provided an [update](#) on two overlapping rulemaking packages—Approved Postgraduate Training and New Postgraduate Training Requirements, sections 1320 and 1321, Title 16 of the CCR—and clarified the rationale to combine the packages into one. Staff explained that the initial rulemaking made amendments to allow the Board to give credit to applicants who went to postgraduate training programs accredited by the American Osteopathic Association (AOA) that had reached initial or pre-accreditation status with the Accreditation Council of Graduate Medical Education (ACGME). Staff noted that AOA had confirmed that allopathic physicians are not going into these postgraduate training programs until they are fully accredited by ACGME. Therefore, since this is not an issue, that provision will be removed from the rulemaking packet. Staff shared additional clarifying changes that will bring sections 1320 and 1321 up to date with legislative changes. Specifically, section 1320 is changed to allow a longer, thirty-nine-month exemption period for postgraduate training. Staff further explained that in section 1321, the Board clarified that postgraduate training programs located in the United States, its territories, and Canada that are accredited by the accreditors the Board relies on would be approved.

Additionally, Staff explained changes that updated the statutory authorizations based on the Board's new postgraduate training requirements. MBC originally published [notice](#) of its intent to amend section 1321 on January 25, 2019. [[24:2 CRLR 43–44](#)]

The Board voted unanimously to direct staff to submit the newly revised proposed regulations to the DCA for approval; once approved, to submit the regulations to OAL for formal notice, and to authorize staff to make any non-substantive changes to the language and respond to non-substantive comments during the rulemaking process without returning the matter to the Board. As of this writing, the New Postgraduate Training Requirements rulemaking package is pending initial DCA review and has not yet been formally noticed.

Recommended Withdrawal of Pending Rulemaking on Supervision Required for Physician Assistants

On October 15, 2019, MBC staff drafted a [report](#) to share at the November Board [meeting](#) [Agenda item 22] with a recommendation to withdraw the pending rulemaking on supervision requirements for Physician Assistants (PAs). Existing law under section 1399.545, Title 16 of the CCR, sets forth the supervising mechanisms for PAs, in which the supervising physician must review, countersign, and date a sample consisting of, at a minimum, five percent of the medical records of patients treated by the PA functioning under adopted protocols within 30 days of the date of treatment by the PA. The regulation also requires the supervising physician to select for review those cases that, by diagnosis, problem, treatment, or procedure, represent, in his or her judgment, the most significant risk to the patient.

At its January 18, 2018, board [meeting](#), MBC approved proposed changes to section 1399.545 to update this regulation based on legislative changes. Board staff prepared the rulemaking file, which progressed through the [review](#), [notice](#), and hearing process. On October 9,

2019, however, the Governor signed [SB 697 \(Caballero\) \(Chapter 707, Statutes of 2019\)](#), which significantly changes the law regarding PA supervision (see LEGISLATION). Consequently, the proposed rulemaking on section 1399.545 will be outdated and inconsistent with the law as of January 1, 2020. For this reason, staff will recommend MBC withdraw the proposed rulemaking at its November Board meeting.

Opioid Safety Efforts

In its [Spring Newsletter](#), MBC provided an update on efforts to fight opioid addiction. Addiction, misuse, and overdose of prescription opioids is a public health crisis in California, and throughout the U.S., that affects both adults and children. On January 1, 2019, legislation took effect, [SB 1109 \(Bates\) \(Chapter 693, Statutes of 2018\)](#), that utilizes a multi-pronged educational approach: teaching providers, patients, student-athletes and their parents about the potential hazards associated with prescribing and taking opioids. As it relates to doctors, the new law requires pain management continuing education courses that include the risks of addiction associated with the use of Schedule II drugs; and requires that prescribers discuss addiction and overdose associated with opioids with a minor and the minor's parent or guardian before dispensing or writing the first prescription of an opioid. The MBC [website](#) regularly posts alerts from the California Department of Public Health Statewide Opioid Safety (SOS) workgroup with guidance for prescribers, first-responders, and clinicians on how to address issues related to their practice.

LEGISLATION

[SB 786 \(Senate Committee on Business, Professions, and Economic Development\)](#), as amended September 5, 2019, repeals Article 11 (commencing with section 2200) of the Business and Professions Code. This provision authorized MBC to award loans, in specified circumstances,

to licensed physicians and surgeons who agree to establish a medical practice in an area deficient in primary care services and required those loans to be repayable to the Contingent Fund of the MBC. SB 786 repeals these provisions in their entirety because the programs are no longer operational.

Governor Gavin Newsom signed SB 786 on October 2, 2019 (Chapter 456, Statutes of 2019).

[AB 241 \(Kamlager-Dove\)](#), as amended August 28, 2019, and as it applies to MBC, amends section 2190.1 of the Business and Professions Code to require continuing education courses for physicians and surgeons to include the understanding of implicit bias and the promotion of bias-reducing strategies. The bill makes legislative findings and declarations as to the prevalence of implicit bias in the medical field. Among other things, the legislature found that implicit bias contributes to the unequal treatment of patients based on immutable characteristics, including race, ethnicity, gender identity, and sexual orientation. Further, unequal treatment of certain patients by licensees leads to health disparities in these vulnerable populations, even when controlling for other factors. [\[24:2 CRLR 49\]](#) Specifically, amended section 2190.1 requires MBC to adopt regulations by January 1, 2022, to adopt an implicit bias curriculum, as specified in the bill.

Governor Gavin Newsom signed AB 241 on October 2, 2019 (Chapter 417, Statutes of 2019).

[AB 845 \(Maienschein\)](#), as amended April 1, 2019, adds section 2196.9 to the Business and Professions Code to require MBC to consider including a course in maternal mental health when determining its continuing education requirements for doctors and to make periodic updates to any course curricula with new research findings on maternal mental health. Effective July 1,

2019, providers are required to screen pregnant and postpartum women for maternal mental health conditions. Effective January 1, 2020, the law also requires specified hospitals to develop and implement programs relating to postpartum depression and other maternal mental health conditions. According to the bill’s author, in light of the prevalence of maternal mental health disorders as the most common complication of giving birth, health care providers need training to identify and treat them appropriately. As the new screening mandate under [AB 2193 \(Maienschein\) \(Chapter 755, Statutes of 2018\)](#) took effect on July 1, 2019, it is imperative that providers who treat mothers during the perinatal period are fully supported and empowered to deliver quality care.

Governor Gavin Newsom signed AB 845 on September 4, 2019 (Chapter 220, Statutes of 2019).

[SB 425 \(Hill\)](#), as amended September 5, 2019, amends sections 2221 and 2234 of the Business and Professions Code to require MBC to disclose probationary certificates and the statement of issues to an interested member of the public, and to post these documents on MBC’s website for ten years from the date of issuance. Also, amended section 2234 removes the condition that failure to attend and participate in an investigation-related interview with MBC, without good cause, be repeated before rising to the level of “unprofessional conduct” disciplinable by MBC. SB 425 arises out of a hearing held in 2018 by the Senate Committee on Business, Professions and Economic Development (*Sexual Misconduct Reporting in the Medical Profession: Missed Opportunities to Protect Patients*), that explored whether licensed health professionals who fail to meet established standards are discovered, reviewed and disciplined, if necessary, in a timely manner. MBC voted unanimously to support the bill at its May 9 [meeting](#). The Board believes the bill will help prevent delays in the Board’s enforcement process and increase transparency by

providing access to information that is public, but not available on MBC’s website after a probationary period is complete. [[24:2 CRLR 50](#)]

Governor Gavin Newsom signed SB 425 on October 12, 2019 (Chapter 849, Statutes of 2019).

[AB 1264 \(Petrie-Norris\)](#), as amended June 25, 2019, amends section 2242 of the Business and Professions Code to clarify that, for purposes of this section, the requirement to perform an “appropriate prior examination” before prescribing, dispensing, or furnishing self-administered hormonal contraceptives does not require real-time interaction between the patient and the licensee. Instead, the examination can be achieved through the use of telehealth, including, but not limited to, a self-screening tool or a questionnaire, provided that the licensee complies with the appropriate standard of care. The bill includes an urgency clause and became effective immediately upon signature.

Governor Gavin Newsom signed AB 1264 on October 11, 2019 (Chapter 741, Statutes of 2019).

[SB 377 \(McGuire\)](#), as amended September 6, 2019, amends sections 369.5 and 739.5 of the Welfare and Institutions Code to, upon approval by a juvenile court judicial officer of a request for authorization for the administration of psychotropic medication to a juvenile patient, require the officer to authorize MBC to review the patient’s medical record. Amended section 369.5 limits review of the juvenile patient’s medical record to the diagnosis for the authorized prescription of psychotropic medication, so MBC can determine whether excessive prescribing inconsistent with the standard of care is occurring. According to the author, “SB 377 will cut through this red tape and allow MBC to carry out their oversight authority.” [[24:2 CRLR 51](#)] MBC voted to support the bill at its May 9 [meeting](#).

Governor Gavin Newsom signed SB 377 on October 7, 2019 (Chapter 547, Statutes of 2019).

[AB 528 \(Low\)](#), as amended September 6, 2019, amends section 209 of the Business and Professions Code, and amends, repeals, and add sections 11164.1, 11165, 11165.1, and 11165.4 of the Health and Safety Code relating to controlled substances. The bill states the legislature’s intent to use prescription drug monitoring programs to continue to empower healthcare-oriented technology solutions to the opioid crisis. The bill changes the timeframe for dispensers to report dispensed prescriptions to the Controlled Substance Utilization Review and Evaluation System (CURES) from seven days to the following working day; authorizes physicians licensed by the MBC but who do not hold a federal Drug Enforcement Agency Registration to register for access to CURES; requires pharmacists to report Schedule V controlled substances to CURES; expands authority for a prescriber’s licensed delegate to retrieve data from CURES on behalf of that prescriber; and makes other clarifying and technical changes to a prescriber’s duty to consult CURES. According to the bill’s author, reducing the time a pharmacist has to report to CURES from 7 days to one working day prevents “doctor shoppers” from visiting multiple prescribers over the course of a whole week to obtain multiple prescriptions.

After a discussion at its August 8 [meeting](#) about potential impacts on workflow and auditing, MBC voted to support AB 528 if section 11165.4 was amended to remove the exemption that a covering physician would not have to check CURES. This change was made in the final language of the bill. Sections 11164.1 and 11165 will become operative January 1, 2021. Sections 11165.1 and 11165.4 will become operative on July 1, 2021, or upon the date the department promulgates regulations to implement this section and posts those regulations on its internet website, whichever date is earlier.

Governor Gavin Newsom signed AB 528 on October 9, 2019 (Chapter 677, Statutes of 2019).

[AB 714 \(Wood\)](#), as amended June 17, 2019, amends sections 740 and 741 of the Business and Professions Code, to clarify when naloxone must be offered and under what circumstances. This bill is in response to [AB 2760 \(Wood\) \(Chapter 324, Statutes of 2018\)](#) and clarifies the existing requirement for a prescriber to offer naloxone or other FDA approved drug for the complete or partial reversal of opioid-induced respiratory depression only when the prescriber is prescribing an opioid or benzodiazepine and one or more at-risk conditions are present. The bill further exempts patients in inpatient facilities and hospice care from AB 2760 requirements. The bill includes an urgency clause and became effective immediately upon signature.

Governor Gavin Newsom signed AB 714 on September 5, 2019 (Chapter 231, Statutes of 2019).

[AB 1519 \(Low\)](#) (the sunset bill for the Dental Board of California), as amended September 6, 2019, amends section 2096 of the Business and Professions Code relating to the Medical Board of California. The bill specifies that oral and maxillofacial surgery residency programs accredited by American Dental Association Commission on Dental Accreditation (CODA) shall be approved as postgraduate training required for licensure if the applicant attended the program as part of the combined dental and medical degree program accredited by CODA. The bill specifies that these programs do not have to comply with the requirement that postgraduate training must include four months of general medicine.

Governor Gavin Newsom signed AB 1519 on October 13, 2019 (Chapter 865, Statutes of 2019).

[SB 159 \(Wiener\)](#), as amended September 5, 2019, amends section 4052 of, and adds sections 4052.02 and 4052.03 to, the Business and Professions Code relating to HIV prevention. The bill authorizes a pharmacist to furnish a 60-day supply of preexposure prophylaxis (PrEP) or post-exposure prophylaxis (PEP) if certain conditions are met, including that the pharmacist determines the patient meets the clinical criteria for PrEP or PEP consistent with federal guidelines. According to the bill's author, currently, PrEP and PEP require a physician's prescription, which delays or prevents some people from accessing the drugs that can significantly reduce the risk of HIV-infection in adults at high risk. The bill requires a pharmacist, before furnishing PrEP or PEP, to complete a training program approved by the Board of Pharmacy in consultation with MBC. The bill further requires the Board of Pharmacy, in consultation with MBC, to adopt emergency regulations by July 1, 2020, to implement the bill's requirements in accordance with the Center for Disease Control guidelines.

At its August 8 [meeting](#), MBC members discussed possible impacts of the bill. Some Board members emphasized that they support the bill because it broadens individual access to these potentially life-saving drugs. Other Board members expressed concern about pharmacists' workflow and lack of monitoring of patients by physicians if the bill passes.

Despite the Board's lack of support, Governor Gavin Newsom signed SB 159 on October 7, 2019 (Chapter 532, Statutes of 2019).

[SB 697 \(Caballero\)](#), as amended September 3, 2019, amends various provisions of the Business and Professions Code, relating to physician assistants (PAs). The bill revises the Physician Practice Act to allow multiple physicians and surgeons to supervise a PA, replaces the delegation of service agreement with a practice agreement, and eliminates the existing medical records review requirement. According to the bill's sponsor, the California Academy of PAs,

statutory limitations on case reviews and the single physician supervision model is overly burdensome and duplicative of other protections built into the healthcare system. To reduce those duplicative requirements, this bill eliminates the statutory requirements for administrative oversight by physicians. It instead requires physicians and PAs to determine for themselves the appropriate level of supervision, with every licensee involved in a specific practice agreement subject to discipline for improper supervision. MBC voted to support SB 697 at its August [meeting](#).

Governor Gavin Newsom signed SB 697 on October 9, 2019 (Chapter 707, Statutes of 2019).

[SB 276 \(Pan\)](#), as amended July 1, 2019, amends sections 120370, 120375, and 120440 of, and adds sections 120372 and 120372.05 to, the Health and Safety Code, to address concerns with the issuance and oversight of medical exemptions provided by physicians to pupils seeking to forego immunization requirements to attend schools. This bill addresses circumstances created with the passage of [SB 277 \(Pan\) \(Chapter 35, Statutes of 2015\)](#), which eliminated the personal belief exemption from the requirement that children receive specified vaccines for certain infectious diseases prior to being admitted to any private or public elementary or secondary school, or daycare center, as specified. SB 277 waived the immunization requirement if a pupil's parent or guardian filed a medical exemption, which is a written statement by a licensed physician to the effect that immunization is not considered safe for that child, indicating the specific nature and probable duration of their medical condition or circumstances. Since 2015, the number of physician-issued medical exemptions more than tripled. Many of the exemptions are clustered in the same schools, creating concentrated pockets of unvaccinated individuals.

SB 276 requires the state's Department of Public Health (DPH), by January 1, 2021, to develop and make available an electronic, standardized, and statewide certified form for physicians

to use with pupils whose parents have requested a medical exemption to the required immunization requirements in order to gain admission to school. The form will be transmitted directly to DPH's existing California Immunization Registry (CAIR). Beginning January 1, 2021, the bill requires clinically trained staff members at DPH to annually review immunization reports from all schools and institutions, especially those with immunization rates of less than 95% and exemptions from physicians who submit five or more in a calendar year. The bill permits DPH to deny or revoke a medical exemption determined to be inappropriate or invalid.

As it relates to MBC, the bill specifies that if DPH determines a physician's practice contributes to a public health risk, DPH shall report the physician to MBC or the Osteopathic Medical Board of California, as appropriate. The bill establishes an appeals process for medical exemptions that are denied or revoked and creates an independent review panel made up of three physicians for appeal purposes. The bill requires the exemption form to include an authorization to release medical records to DPH, MBC, and Osteopathic Medical Board of California. This will remove the obstacle the Board is currently facing in investigating medical exemption cases.

At a May 28 board [meeting](#) via teleconference, and again, at its August 8 board [meeting](#), MBC allowed extensive public comment both for and against the bill. After deliberation, MBC members voted in support of SB 276.

Governor Gavin Newsom signed SB 276 on September 9, 2019 (Chapter 278, Statutes of 2019).

[AB 744 \(Aguilar-Curry\)](#), as amended September 10, 2019, amends section 2290.5 of the Business and Professions Code, and amends section 1374.13 of, and adds section 1374.14 to, the Health and Safety Code. This bill requires a health plan or insurer to reimburse for services provided through telehealth on the same basis and to the same extent that the health plan or insurer

is responsible for reimbursement for the same service through in-person diagnosis, consultation, or treatment. The bill's sponsor, the California Medical Association, argues the bill will reduce barriers to the provision of and payment for telehealth services, thus, increasing access to care.

Governor Gavin Newsom signed AB 744 on October 13, 2019 (Chapter 867, Statutes of 2019).

Legislative Bills That Died

The following bills reported in [Volume 24, No. 2 \(Spring 2019\)](#) are still pending in committee: [AB 387 \(Gabriel\)](#), which would require physicians and surgeons to advise patients as to the purpose of a prescribed drug or device upon the prescription of said drug or device, and permit patients to opt out of having the purpose of a prescribed drug or device included by the covered prescriber on the prescription label; [AB 1030 \(Calderon and Petrie-Norris\)](#), which would require MBC, in coordination with the American College of Obstetricians and Gynecologists, to develop an informational pamphlet for patients undergoing gynecological exams that contains certain information, such as what pelvic exams and pap smears are, how doctors perform them, and patient privacy expectations; [SB 201 \(Wiener\)](#), which would, in the absence of medical necessity and the subsequent informed consent of the parent(s) or guardian(s), forbid licensees from performing any treatment or intervention on the sex characteristics of an intersex minor without the informed consent thereof; [AB 544 \(Brough\)](#), which would limit the maximum inactive license renewal fee to, at most, fifty percent of the renewal fee for active licenses and would also prohibit MBC from requiring payment of outstanding accrued renewal fees as a condition for reinstatement of an expired license or registration; [AB 370 \(Voepel\)](#), which would limit the amount that licensees may charge patients for filling out certain medical and related forms to a reasonable fee based on the actual time and cost for filling out the form.

LITIGATION

Kennedy v. Grafilo, Case No. CPF19516531 (Super. Ct. San Francisco) 36 Cal. App. 5th 306 (2019). This matter stems from a series of investigative subpoenas MBC served on Dr. Ron Kennedy, seeking the medical records of three minors for whom Dr. Kennedy provided vaccination exemptions. After Dr. Kennedy refused to produce the records, the Director of DCA filed a petition in the superior court, compelling him to comply with the subpoenas. The superior court granted the petition and ordered Dr. Kennedy to produce records shortly thereafter. The superior court denied Dr. Kennedy’s request to stay the order while he pursued appellate review. Dr. Kennedy then filed the instant petition for a writ of supersedeas to stay the order pending appeal. The trial court denied Dr. Kennedy’s request to stay the order while he pursued appellate review.

The appellate court held that the automatic stay provisions sought by petitioner Dr. Kennedy do not apply to a special proceeding. The appellate court’s conclusion is consistent with the practice of federal courts, where appellants are not entitled to an automatic stay pending appeal of a subpoena compliance order. Following legal precedent, the appellate court reasoned that an automatic stay would impede the Board’s discharge of its duty to protect the public against incompetent, impaired, or negligent physicians since the Legislature has “broadly” vested the Board with authority to investigate complaints against physicians. Thus, the appellate court denied the petitioner’s request for a writ of supersedeas to stay the superior court’s order compelling him to produce patient records for the MBC. The court also declined to grant a discretionary stay of the order.

RECENT MEETINGS

At its August 9 [meeting](#), MBC unanimously elected public member Denise Pines as President, licensee member Dr. Ronald Lewis as Vice President, and licensee member Dr. Howard Krauss as Secretary. The Board also appointed Dr. Dev GnanaDev to the Health Professions and Education Foundation.

At the August 9 meeting, Dr. Hawkins provided an update on the Stem Cell and Regenerative Therapy Task Force [[Agenda item 21](#)]. He gave an overview of the creation of the Task Force and its purpose to evaluate the prevalence, promotional practices, and incidences of patient harm related to regenerative medicine and adult stem cell therapies in the U.S. and to identify and report recommended best regulatory practices and guidelines. Dr. Hawkins shared that Board staff met with officials from the state's Department of Public Health to discuss collaboration, potential legislation, and investigating complaints regarding these practices. Dr. Krauss added that Task Force members met with Board staff in June 2019 to discuss oversight options and next steps to protect California consumers. Dr. Krauss announced the interested parties [meeting](#) that occurred on September 18, 2019.

At the August [meeting](#), Board staff presented an update on several rulemaking packages in process or still pending DCA review: Physician and Surgeon Health and Wellness Program [[23:2 CRLR 50–51](#)]; Notice to Consumers [[24:1 CRLR 54–55](#)]; New Postgraduate Training Requirements [[24:2 CRLR 43–44](#)]; Approved Medical Assistant Certifying Organizations [[24:2 CRLR 42–43](#)]; and Substantial Relationship and Rehabilitation Criteria ([Agenda item 18](#)) discussed at May 10, 2019 Board [meeting](#). At this writing, the Board has not formally noticed any of these proposed regulations.