

# **BACKGROUND PAPER FOR THE OSTEOPATHIC MEDICAL BOARD**

**Joint Oversight Hearing, March 11, 2013**

**Senate Committee on Business, Professions and Economic Development  
and  
Assembly Committee on Business, Professions and Consumer Protection**

**IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS  
FOR THE OSTEOPATHIC MEDICAL BOARD**

## **BRIEF OVERVIEW OF THE OSTEOPATHIC MEDICAL BOARD**

### **Function of the Osteopathic Medical Board**

The Osteopathic Medical Board of California (Board) was established in 1922 when the Osteopathic Initiative Act was passed by electorate. In 1962, another initiative was passed providing the Legislature the authority to amend the Osteopathic Initiative Act. To date, the only restriction on the Legislature's power is that it may not fully repeal the Osteopathic Initiative Act unless the number of licensed osteopathic physicians (DOs) falls below 40.

In 2002, the Board volunteered to be included under the umbrella of the California Department of Consumer Affairs (DCA). As one of the regulatory entities within the DCA, the Board is charged with the licensing and regulation of DOs. The Board's statutes and regulations set forth the requirements for licensure and provide the Board the authority to discipline a licensee.

The current Board mission statement, as stated in its 2010-2015 Strategic Plan, is as follows:

*The Osteopathic Medical Board leads by promoting excellence in medical practice, licensure and regulation, as the voice and resource towards protection of the public.*

The current Board vision statement, as stated in its 2010-2015 Strategic Plan, is as follows:

*The Osteopathic Medical Board is the leader in medical regulation for osteopathic physicians in the state of California; serving as an innovative catalyst for effective policy and standards.*

Osteopathic medicine was developed more than 130 years ago by Andrew Taylor Stills, MD, DO. Osteopathic medicine brings a unique philosophy to traditional medicine. Osteopathic physicians are fully licensed to prescribe medication and practice in all medical specialty areas including surgery. They are trained to consider the health of the whole person and use their hands to help diagnose and treat their patient.

Osteopathic physicians are one of the fastest growing segments of health care professionals in the United States with the 4<sup>th</sup> largest osteopathic population being employed in California. There are 4,986 DOs in California with active licenses and 941 of these DOs reside in other states. There are 645 DOs who maintain inactive licenses.

Osteopathic physicians are similar to doctors of medicine (MDs) in that both are considered to be “complete physicians.” Complete physicians have taken the prescribed amount of pre-medical training, graduated from an undergraduate institution with an emphasis on science courses, and received four years of training in medical school. The same laws govern the required training for DOs and MDs who are licensed in California. In fact, BPC § 2453 states: “...it is the policy of this State that holders of MD degrees and DO degrees shall be accorded equal professional status and privileges as licensed physicians and surgeons.” Licensing examinations are also comparable in rigor and comprehensiveness to those given to MDs.

Osteopathic physicians are required to complete a year of post-graduate training, e.g. residency or rotating internship, in a hospital with an approved post-graduate training program. Osteopathic physicians utilize all scientifically accepted methods of diagnosis and treatment, including the use of drugs and surgery and are licensed in all fifty states to perform surgery and prescribe medication in accredited and licensed hospitals and medical centers.

Osteopathic physicians may refer to himself/herself as a “Doctor” or “Dr.” but in doing so, must clearly state that he/she is a DO or osteopathic physician and surgeon. He or she may not state or imply that he or she is a MD while being licensed in California as a DO.

A key difference between the two professions is that DOs have additional dimension in their training and practice, one not taught in medical schools which grant MD degrees. Osteopathic medicine gives particular recognition to the musculoskeletal system which comprises over 60% of body mass. A DO is trained to recognize that all body systems, including the musculoskeletal system, are interdependent, and a disturbance in one can cause altered functions in other systems of the body. The osteopathic physician is also trained in how this interrelationship of body systems is facilitated by the nervous and circulatory systems. The emphasis on the relationship between body structure and organic functioning is intended to provide a broader base for the treatment of the patient as a unit. These concepts require a thorough understanding of anatomy and the development of special skills in diagnosing and treating structural problems through manipulative therapy. Osteopathic physicians use structural diagnosis and manipulative therapy along with all of the other traditional forms of diagnosis and treatment to care effectively for patients in order to relieve their distress.

To meet its responsibilities for regulation of the DO profession, the Board is authorized by law to:

- Monitor licensees for continued competency by requiring approved continuing education.
- Take appropriate disciplinary action whenever licensees fail to meet the standard of practice, or otherwise commit unprofessional conduct.
- Determine that osteopathic medical schools and hospitals are in compliance with medical education curriculum and post-graduate training requirements.
- Provide rehabilitation opportunities for licensees whose competency may be impaired due to abuse of alcohol or other drugs.

Initially, the Board was comprised of five Osteopathic Physicians appointed by the Governor to staggered three year terms. In 1991 two Public members, one appointed by the Speaker of the Assembly and one by the Senate Rules Committee, were added to the Board. In 2010, two additional

Governor appointed public members were added. All Board meetings are subject to the Bagley-Keene Open Meetings Act.

The following table lists all members of the Board including background on each member, appointment date, term expiration date and appointing authority.

Board Members	Appointment Date	Term Expiration Date	Appointing Authority
<p><b>David Connett, DO (professional member)</b> served as Associate Dean of Clinical Services at Western University of Health Sciences, Pomona, CA since 2007 and Vice Chairman at the Healthcare Facilities Accreditation Program since 2000. From 2003-2007, he was Vice President and Chief Medical Officer at Garden City Hospital and Medical Director at Exempla Healthcare. Dr. Connett served as Family Medicine Program Director and Medical Director at HealthONE from 1992-2003 and was Chief of Aerospace Medicine for the US Air Force from 1985 to 1991. He earned a Doctor of Osteopathic Medicine degree from the College of Osteopathic Medicine of the Pacific at the Western University of Health Sciences.</p>	06/09/12	6/1/15	Governor
<p><b>Joseph Zammuto, DO (professional member)</b> has been a partner and physician at Center Medical Group Inc, since 1997 and a physician at Medpartners-Mullikin Medical Group from 1995 to 1997. He was a partner and physician at Zammuto and Zinni Medical Inc. from 1991 to 1995, owner of Joseph Zammuto D.O., from 1984 to 1991. Dr. Zammuto earned his Doctor of Osteopathic Medicine degree from the Chicago College of Osteopathic Medicine.</p>	06/07/12	6/1/15	Governor
<p><b>Michael Feinstein, DO (professional member)</b> has served as a physician at Encompass Medical Group since 2000 and was a physician at Sharp Reese Stealy Medical Group from 1998 to 2000. He was a physician at Family Practice Associates of San Diego from 1978 to 1998. He earned his Doctor of Osteopathic Medicine degree from the Philadelphia College of Osteopathic Medicine.</p>	06/07/12	6/1/15	Governor
<p><b>Jane Xenos, DO (professional member)</b> has operated her own practice since 1991. She earned her Doctor of Osteopathic Medicine degree from the College of Osteopathic Medicine of the Pacific at the Western University of Health Sciences. Dr. Xenos is Board Certified in neuromuscular medicine/osteopathic manual medicine and family practice.</p>	06/07/12	6/1/15	Governor
<p><b>Joseph Provenzano, DO (professional member)</b> has served as a family medicine doctor at Sutter-Gould Medical Group since 1990. Previously, Dr. Provenzano served as an emergency room physician at Fisher-Mangold Emergency Physicians from 1988- 1990. Dr. Provenzano served on the Board of Directors of the Gould Medical Group, Inc from 2000 to 2006 and Board of</p>	4/19/10	6/1/12	Governor

Directors of the Sutter Gould Medical Group from 2007 to 2010. He has also served as the Director of Graduate Medical Education OPTI Program for Orthopedics at the Midwestern Osteopathic Medical School since 2011. Dr. Provenzano earned his Doctor of Osteopathic Medicine degree from University of North Texas Health Center at Fort Worth Texas College of Osteopathic Medicine.			
<b>Scott Harris, Esq., (public member)</b> is a former Deputy Attorney General with the California Department of Justice, and in 2010 formed S J Harris Law. He is also an Adjunct Professor of Law at Loyola Law School, Los Angeles.	12/2/10	1/01/13	Governor
<b>Allen Howard, (public member)</b> has served as a project manager for American President Lines, a global leader in container shipping, logistics and technology management since 2004. Mr. Howard previously held several positions including director for the TNT Post Group, where he worked from 1994-2002.	12/2/10	1/01/13	Governor
<b>Claudia Mercado, MBA (public member)</b> blends her entrepreneurship spirit and passion for the development of the Hispanic community with her expertise in business management and cross-cultural relations in her work at Rocket Lawyer Incorporated. As a Business Specialist, she leads the initiative to implement a marketing strategy to bring accessible and affordable legal services to every Hispanic household and small business owner in the United States. Ms. Mercado is a strong supporter of Non-Profit Hispanic Professional Organizations and a strong advocate for increased access to higher education and political equality. She currently serves as a San Jose Chapter board member for the National Society of Hispanics MBA's and is an alumna of the Hope Leadership Institute Class of 2012. Mercado holds a bachelor's degree in Political Legal Economic Analysis and a Masters degree in Business Administration from the Lorry I. Lokey Graduate School of Business.	8/18/2012	6/1/2013	Senate Rules Committee
<b>Keith Higginbotham, Esq., (public member)</b> is the owner and sole proprietor of The Law Office of Keith Alan Higginbotham in Los Angeles. Mr. Higginbotham serves as Chairman of the Los Angeles County Bar Association Commercial Law and Bankruptcy Section, DAP/Pro bono Subcommittee since 2008. He is also on the Board of Directors, LA County Association Bankruptcy Section as the Consumer Liaison since 2005. He served as President of the Central District Consumer Bankruptcy Attorney Association in 2011-2012. Mr. Higginbotham served as an Administrative Assistant to then Legislative Director to Senator Art Torres, State Capital, Sacramento from 1985 to 1991. He was a Committee Consultant to the Senate Judiciary Committee, the Senate Appropriations Committee and the Senate Budget Committee. Mr. Higginbotham received his JD degree from McGeorge School of Law at the University of the Pacific.	07/01/12	6/1/15	Speaker of the Assembly

The Board has organized two committees which serve as an essential component to help the Board deal with specific policy and/or administrative issues. The committees research policy issues and concerns, referred by the Board staff, the public, or licensees.

The following is a description of committees that have been established by the Board:

#### Diversion Evaluation Committee (DEC)

The DEC is established in statute (BPC § 2360). The purpose of the DEC is to manage a treatment program for DOs whose competency may be threatened or diminished due to substance abuse.

The DEC is comprised of three licensed DOs who are appointed by the Board and who serve at the pleasure of the Board. The appointees must have experience in the diagnosis and treatment of substance abuse.

The DEC not only has the responsibility to accept, deny or terminate a participant, they also prescribe in writing for each participant a treatment and rehabilitation plan including requirements for supervision and surveillance.

#### Consultants Committee (CC)

The members of the CC represent a range of osteopathic medical disciplines and are responsible for reviewing complaints against licensed DOs and the associated medical records. The members receive training and case-by-case guidance as to the interpretation and application of relevant law.

The process for referring a case entails the Board staff sending the complaint file to members of the CC to review along with any relevant medical records. The consultants then prepare a written report explaining their conclusions and recommendations. All quality of care complaint cases are retained for ten years from date the Board receives the complaint (BPC § 2029).

Based on the information in the file, a consultant may conclude:

- The complaint is without merit and should be closed without further action.
- The complaint may have merit but there is clearly insufficient evidence to take further action.
- The complaint appears to have merit and should be made the subject of a more detailed investigation leading to possible disciplinary action or even referral to criminal prosecution.

The Board is a dues paying member of the Federation of State Medical Boards (FSMB). The FSMB is comprised of representatives of all medical boards in the U.S. States and Territories. During the FSMB's annual meeting, salient topics including licensure, enforcement, credentialing, working with underserved populations, and telemedicine are discussed and resolutions offered.

The annual FSMB dues are \$2,000.00. As a benefit to the members, the FSMB gives each participating board a \$3,600.00 scholarship to cover the costs of travel to the annual meeting. However, the Board has not been active or participated in FSMB activities for the past six years due to DCA's mandated state limitation on out of state travel for Board members and staff.

(For more detailed information regarding the responsibilities, operation, and functions of the Board please refer to the Board's *2012 Oversight Report*)

## **PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS**

The Board was last reviewed in 2005 by the Joint Commission on Boards, Commission, and Consumer Protection (JCBCCP). During the previous sunset review, the JCBCCP raised 6 issues and included a set of recommendations to address those issues. Below, are actions which the Board and Legislature addressed over the past 8 years. Those which were not addressed and which may still be of concern to this Committee are addressed more fully under the “Current Sunset Review Issues” section.

In November, 2012, the Board submitted its required sunset report to this Committee. In the report, the Board described actions it has taken since its prior review to address the recommendations of the JCBCCP. According to the Board, the following are some of the more important programmatic and operational changes, enhancements, and other important policy decisions or regulatory changes made:

### **Addition of the Naturopathic Medicine Committee**

The Board had a major change in 2009 when the Legislature placed the Naturopathic Medicine Committee within the Board. The Board was increased at that time from seven, five professional and two public, to nine members. The two added members were Naturopathic Doctors and were considered public members. These appointments were in violation of BPC § 3600 1.5 which states, “public members shall not be a licensee of any board...nor of any initiative act.” In response, the Osteopathic Physicians and Surgeons of California (OPSC) sponsored SB 1050, supported by the Board and the Naturopathic Medicine Committee. Passage of SB 1050 made the Naturopathic Medicine Committee independent and resulted in the removal of the two naturopathic doctors from the Board. These two vacancies were replaced by two public members, one appointed by the Speaker of the Assembly and one by the Senate Pro Tempore.

### **Strategic Plan**

The Board reported that in 2010 it completed its Strategic Plan. In April of 2012, the Board updated the plan. The Board reported that it is beginning a study for implementation of the Strategic Plan.

### **Code of Ethics**

During the 2005 Sunset Review hearing, the JCBCCP inquired why the Board had not adopted a Code of Ethics. The opinion of the JCBCCP was that nearly all other licensed professions abide by a Code of Ethics enforceable by their respective licensing board.

In both its 2005 and 2012 report, the Board noted that its licensees are “expected” to abide by the American Osteopathic Association’s (AOA) voluntary Code of Ethics. The Board indicated:

*After a diligent study requested by the Sunset Review Committee, determined a Code of Ethics is not necessary and will not be included in the regulation as all ethical violations are currently in statute and duplication is unnecessary.*

This was presented in the form of a motion and was passed unanimously by the Board.

### **Board Merger**

During the 2005 Sunset Review hearing, the JCBCCP raised the issue of the OMB merging with the MBC. The JCBCCP inquired:

*In light of the fundamental and statutorily required equality between DOs and MDs, is there a continuing need for two separate Boards to regulate those who hold unrestricted licenses as physicians and surgeons?*

In its recent report, the Board responded:

*The history of the interactions between the Board and the MBC has been rather stormy. The Board was created in 1922 by initiative in response to the refusal of the MBC to continue to license DOs....It is perceived that any attempt to eliminate the Board and place DOs under the MBC would be met with fierce opposition and the legality of altering the 1922 imitative which would also be challenged.*

### **Repayment of General Fund Loan**

During the 2005 Sunset Review hearing, the JCBCCP inquired about the status of the loan the Board made to the General fund in 2002-2003. The Board indicated in its recent report that the \$2,700,000.00 sum that was borrowed from the Board was subsequently repaid in full with interest in 2006-2007. In fiscal year 2010-2011, the General Fund borrowed \$1,500,00.00 with on established schedule for repayment. On the basis of the prior repayment, the Board stated that they have confidence that the current loan will also be repaid.

### **Legislation Sponsored by or Affecting the Board**

The Board reported, with the exception of SB 1050, there has been no sponsored legislation or major studies since the last sunset review.

### **Pending Regulations**

Since the Board's last sunset review in 2005, the Board reports that there have been no regulatory changes. Currently, the Board is working to develop regulations in the following four areas:

- The Board has maintained the licensure fees at \$200 for initial licensure and \$400 for renewals. The Board has maintained the renewal fees at \$400 whereas the Medical Board of California (MBC) has increased this fee to \$800. In applying for the increase for renewals to \$800 the MBC agreed to relinquish the option to obtain cost recovery from physicians who have violated the code of practice. The Board opines that the individuals who violate the code should be responsible for expenses associated with investigation and prosecution and on this basis has not requested an increase in renewal fees which would place the burden for costs on physicians who are practicing within the accepted standards. In 2005, the Board applied for and was granted an increase from \$200 to \$400 for initial licensure. The process has begun to generate the regulation to achieve the requested and approved increase.
- The Board is structuring a regulation to comply with 16 CA ADC §1355.4, which requires that a physician prominently display the name and contact information for the agency by which he/she is licensed.
- The Board is structuring a regulation for implementation of SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008).
- The Board is in the process of amending its Disciplinary Guidelines, to assist in better uniformity and applicably for enforcement actions.

- The Board is drafting a regulation to increase the maximum citation and fine amount to \$5,000.00.

## CURRENT SUNSET REVIEW ISSUES

The following are areas of concern for the Board to consider along with background information regarding the particular issue. There are also recommendations the Committee staff have made regarding particular issues or problem areas which need to be addressed. The Board and other interested parties, including the professions, have been provided with this Background Paper and are asked to respond to both the issues identified and the recommendations of the Committee staff.

### CODE OF ETHICS

#### **ISSUE #1: Should DOs have to abide by a Code of Ethics enforceable by the Board?**

**Background:** The Board does not currently have in place an enforceable Code of Ethics for its licensees. This is highly unusual among consumer protection boards and was highlighted during the 2005 sunset review process.

In both its 2005 and 2012 report, the Board notes that its licensees are “expected” to abide by the American Osteopathic Association’s (AOA) voluntary Code of Ethics. However, this expectation is not enforceable by the Board. The Board responded: “Nothing in the law or regulations requires osteopathic physicians and surgeons to adhere to the AOA standards.” Nor, as the board pointed out in 2005, does the AOA have any jurisdiction to enforce its voluntary Code if one of the Board’s licensees does not abide by that Code. By not itself adopting the AOA Code, or something like it the Board appears to have abdicated its responsibility to adopt regulations in this exceptionally important area.

In 2005, the Board told Committee staff that the Attorney General had advised them there was no need for them to adopt a Code of Ethics (Conversation with Linda Bergmann, Executive Director, Board on Dec. 2, 2004). This advice was apparently oral since the Board had no documentary evidence for it. To date, Committee staff has not been able to confirm with the Attorney General’s staff what specifically might underlie this advice, nor provide a reason that it might be sound.

The Board continues to suggest to the Committee that the Board lacks the ability to promulgate such regulations:

*Regulations would be impossible to obtain as there is no statute defining ethics. Ethics means conforming to a set of standards of conduct of a given profession or group, and is not defined in law. (2005 Board Response to Committee’s Sunset Review Follow-up Questions, page 2).*

*Our interpretation of the law is that only the law defines the professional practices that are within the Board’s regulatory authority. Therefore, we would not have the authority to enforce a set of standards that embellish what is found in the law. (2012 Board Oversight Report, page 13).*

However, the Board, like all regulatory entities with a mandate to protect the public interest, has full authority to promulgate regulations concerning the ethics and professional responsibility of its licensees. The fact that “ethics” is not, itself, defined in law, does not prevent the Board from promulgating regulations that will fulfill its ability to achieve its paramount duty to protect the public in carrying out its “licensing, regulatory and disciplinary functions.” (BPC § 2450.1) That authority supports the ability of the Board to define what ethics are appropriate for DOs as a matter of protection of the public.

It appears there may be continued misunderstanding. In 2005, a Deputy Attorney General familiar with boards and commissions suggested to Committee staff that an Attorney General might have advised the Board that they should not adopt, *in its entirety*, the AOA Code of Ethics, since such national standards are frequently updated, and it would be incumbent on the Board to keep up with changes made at the national level as they are adopted. This is certainly an issue, but it is equally true of any set of standards. Even if the Board established its own Code of Conduct entirely independent of the AOA Code of Ethics, it would have to revisit it periodically to make certain it is up-to-date and appropriate in a changing environment.

The Board can easily address even the more obvious issue with the AOA Code. The Board could adopt the AOA Code in regulation by reference, in a manner that would incorporate any changes as they are adopted nationally. Or, the Board could adopt the AOA Code as it now stands, follow any national changes as they develop, and adopt the changes. Or, it could adopt parts of the AOA Code the Board agreed with, and modify or adapt others.

The Committee continues to reserve concern about the Board’s lack of action in regards to this issue. This is especially since this kind of administrative decision making is not only commonplace among boards, it is an essential characteristic of an administrative agency of any kind. Moreover, any staff time that would have to be involved in tracking changes by the national organization is more than outweighed by the current problem of having no enforceable standards in place whatsoever.

***Staff Recommendation:*** *In line with its recommendation made during the 2005 Sunset Review Hearing, the Committee maintains that the Board utilizes either the existing AOA code of ethics or create its own set of ethical standards which will give licensees more guidance on ethical conduct, and which the Board will then have the ability to enforce with specificity by December 1, 2014.*

## **BOARD MERGER**

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### **ISSUE #2: Should the Board be merged with the MBC?**

**Background:** Since the initiative establishing the Board in 1922, California’s public policy has been clear that DOs are to be treated equally with MDs. For example, BPC § 2453(a) states: “It is the policy of this state that holders of MD. degrees and DO degrees shall be accorded equal professional status and privileges as licensed physicians and surgeons.”

Moreover, this equality is so firmly established that it extends to a statutorily mandated rule of non-discrimination. BPC § 2453(b) states:

*Notwithstanding any other provision of law, no health facility subject to licensure under Chapter 2 (commencing with Section 1250) of Division 2 of the Health and Safety Code, no health care service plan, nonprofit hospital service plan, policy of disability insurance, self-insured employer welfare benefit plan, and no agency of the state or of any city, county, city and county, district, or other political subdivision of the state shall discriminate with respect to employment, staff privileges, or the provision of, or contracts for, professional services against a licensed physician and surgeon on the basis of whether the physician and surgeon holds an MD or DO degree.*

This equality, as well as the vastly coextensive education and training of MDs and DOs, and the exact parity of their unrestricted licenses and scopes of practice, raise a perennial question: Is there a continual need to have two separate regulatory bodies for these virtually identical professions? The question is particularly timely in light of the Governor's well-publicized desire to eliminate redundancies and inefficiencies in state government, and particularly in the structure of the state's boards and commissions.

The primary difference between DOs and MDs appears to be essentially one of emphasis. According to the Board, DOs have a different philosophy of medicine, focused on the interrelationship of the body's systems, a focus MDs do not share. Aside from that, both professions apparently have identical licenses, identical scopes of practice, and must be treated by insurers, hospitals, and government entities identically. They are held to apparently virtually identical standards of practice by hospital Peer Review Organizations and liability insurers, and, both the Board and the MBC use the same prosecutors when their licensees are subject to formal accusations.

As was highlighted in the 2005 Sunset Review report, the Committee reiterates the question: In light of the fundamental and statutorily required equality between DOs and MDs, is there a continuing need for two separate boards to regulate those who hold unrestricted licenses as physicians and surgeons?

**Staff Recommendation:** *Consistent with the question raised during the 2005 Sunset Review hearing, the Committee encourages the Board to consider the feasibility of merging with the MBC.*

## **USE OF TECHNOLOGY**

### **ISSUE #3: Webcasting meetings.**

**Background:** The Board reported that it has only webcast one meeting since joining DCA. The Board reported that it webcast a meeting in 2010 "...when the Governor added the Naturopathic Medicine Committee under its purview. Due to the amount of resistance the Board received from its licensee population, and after receiving a legal opinion from DCA, the Board decided to webcast the proceedings of that meeting."

The Committee is concerned about the Board's lack of use of technology in order to make the content of the Board meetings more available to the public. Webcasting is an important tool that can allow for remote members of the public to stay apprised of the activities of the Board as well as trends in the profession.

**Staff Recommendation:** *The Board should inform the Committee of the reason that they have been unsuccessful in webcasting meetings. The Committee recommends that the Board utilize webcasting at future meetings in order to allow the public the best access to meeting content, activities of the Board and trends in the profession.*

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**ISSUE #4:** Posting meeting materials to the website.

**Background:** The Board reported that it does not have an IT staff. Thus, the Board utilizes DCA’s IT department to post “...only the mandated and very basic information” to their website. The Board explained that they do not post meeting materials or minutes to the website. However, the Board reported a desire to use the website as “...a tool to reach consumers and DOs. The Board wishes to educate consumers and recruit more DOs to California to meet the State’s ever changing health care needs.”

The Committee is concerned about the Board’s lack of use of the website in order to make meeting content available to the public. The Committee has reviewed the process for posting information online and does not feel that an additional staff person is needed in order to complete this task.

**Staff Recommendation:** *The Committee requests that the Board begin posting meeting materials to their website as well as sending links to the meeting materials via their listserv immediately.*

## **LICENSE PORTABILITY**

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**ISSUE #5:** License portability for military personnel and their spouses.

First Lady Michelle Obama and Dr. Jill Biden launched the Joining Forces campaign in order to assist military veterans and their spouses in accessing the workforce. In response to this campaign, Governors in over 20 states signed pro-military spouse license portability laws. Additionally, on January 24, 2011, U.S. President Barack Obama presented “Strengthening Our Military Families: Meeting America’s Commitment,” a document urging agencies to support and improve the lives of military families.

As a result of the Joining Forces campaign and the President’s directive, the Department of Transportation and the Department of Defense issued a joint report to highlight the impact of state occupational licensing requirements on the careers of military spouses, who frequently move across state lines. Released in February 2012, the report, “Supporting our Military Families: Best Practices for Streamlining Occupational Licensing Across State Lines” revealed that approximately 35% of military spouses work in professions that require state licenses or certification and that military spouses are ten times more likely to have moved to another state in the last year compared to their civilian counterparts. In a 2008 Defense Manpower Data Center survey of active duty military spouses, participants were asked what would have helped them with their employment search after their last military move. Nearly 40% of those respondents who have moved indicated that ‘easier state-to-state transfer of certification’ would have helped them.”

As a result of the survey, the Department of Transportation and the Department of Defense issued several recommendations, including the authorization of temporary licenses for military spouses if the applicant met state requirements. The report’s recommendation specified:

*Temporary licenses allow applicants to be employed while they fulfill all of the requirements for a permanent license, including examinations or endorsement, applications and additional fees. In developing expedited approaches that save military spouses time and money, DOD does not want to make licensure easier for military spouses to achieve at the expense of degrading their perceived value in their profession.*

Several bills have been presented to the Legislature across the past few years that deal with providing expedited licenses to military veterans and spouses, exempting active duty military personnel from continuing education requirements and licensing fees. In 2012, AB 1904 (Block, Chapter 399, Statutes of 2012) was signed and requires a Board under the DCA to expedite the licensure process for military spouses and domestic partners of a military member who is on active duty in California.

As part of the 2012-2013 Budget Package, the California Legislature directed the DCA to prepare a report on the implementation of BPC § 35 relating to military experience and licensure. The law indicates:

*It is the policy of this state that, consistent with the provision of high-quality services, persons with skills, knowledge, and experience obtained in the armed services of the United States should be permitted to apply this learning and contribute to the employment needs of the state at the maximum level of responsibility and skill for which they are qualified. To this end, rules and regulations of boards provided for in their code shall provide for methods of evaluation education, training and experience obtained in the armed services, if applicable to the requirements of the business, occupation or profession regulated... Each board shall consult with the Department of Veterans Affairs and the Military Department before adopting these rules and regulations. (BPC §35)*

The DCA provided a list of boards that accept military experience and those who do not. The Osteopathic Medicine Board was included in the list of boards that do not have specific statutes or regulations authorizing the acceptance of military experience towards licensure.

The Committee is supportive of the Federal and State efforts to assist licensed military personnel and their family members enjoy better license portability. The Committee encourages licensing boards to examine their ability to exempt licensees from CE and licensing fee requirements during duty as well as waiving any licensing fees that have accrued upon the end of their duty term. The Committee is also supportive of standards for granting temporary licenses or expediting the licensing process for military spouses.

**Staff Recommendation:** *The Board should make every attempt to comply with BPC § 115.5 in order to expedite licensure for military spouses. The Board should also consider waiving the fees for reinstating the license of an active duty military licensee.*

## **BUDGET**

### **ISSUE #6: Why are the operating expenses & equipment (OE&E) expenditures so high?**

**Background:** In its recent report to the Committee, the Board detailed its expenditures by program component. The Board noted that over the past four years, 62% of its expenditures have been

dedicated to OE&E. Specifically, the OE&E for the Board’s enforcement activity has almost doubled in the past fiscal year. Additionally, the OE&E has decreased significantly for the licensing and diversion components.

<b>Expenditures by Program Component</b>								
	FY 2008/09		FY 2009/10		FY 2010/11		FY 2011/12	
	Personnel Services	OE&E						
Enforcement	128,736	232,096	127,764	216,202	143,842	185,289	144,956	335,359
Examination	-	-	-	-	-	-	-	-
Licensing	193,104	348,144	191,646	324,304	215,763	277,934	217,934	86,447
Administration *	64,368	116,048	63,882	108,102	71,921	92,645	153,151	28,816
DCA Pro Rata	-	99,700	-	105,766	-	161,665	-	195,372
Diversion (if applicable)	64,368	116,048	63,882	108,102	71,921	92,645	72,478	28,816
<b>TOTALS</b>	<b>\$450,576</b>	<b>\$912,036</b>	<b>\$447,174</b>	<b>\$862,476</b>	<b>\$503,447</b>	<b>\$810,178</b>	<b>\$588,019</b>	<b>\$674,810</b>

\*Administration includes costs for executive staff, board, administrative support, and fiscal services.

The Committee is aware of the Board’s reported budgetary constraints. As such, the Committee is curious about why there is such high OE&E for 2011-2012. The Committee is also interested in the low expenditures for licensing and diversion.

**Staff Recommendation:** *The Board should advise the Committee of the significant inconsistencies in its OE&E, licensing, and diversion program components.*

## **ENFORCEMENT**

### **ISSUE #7: How does the Board plan to regulate Internet prescribing?**

**Background:** The Board indicated that it regulates Internet prescribing in accordance with BPC § 2242.1. According to the law, no licensee shall prescribe, dispense, or furnish on the Internet any “dangerous drug or device” defined as any drug or device bearing the legend: “caution: federal law prohibits dispensing without prescription,” “Rx only,” or words of similar import without prior examination of the patient. Violation of this law constitutes unprofessional conduct. In its recent report to the Committee, the Board reported that it “... investigates instances where osteopathic physicians are involved in this type of practice and prosecutes physicians found guilty of substandard care.” They reported that “much of this activity goes without notice to the licensing agency...and internet prescribing is an ongoing problem for the Board.”

The Committee is concerned with the Board’s ability to effectively regulate DOs who may be engaged in the practice of Internet prescribing. The Committee notes that the Board indicated that there should be a national effort to monitor Internet prescribing.

**Staff Recommendation:** *In light of the Board’s concerns about regulating the practice of Internet prescribing and the board’s recommendation about national regulation of this practice, the Committee recommends that the Board create a subcommittee to research the issue of Internet prescribing and create policy recommendations for regulating this practice.*

## **ISSUE #8: What has led to the time lag in cases referred to the Attorney General?**

**Background:** According to the Board’s recent report to the Committee, enforcement cases which were referred to the Attorney General for formal discipline extended considerably beyond the target time frame of 540 days. For fiscal year 2010-2012, the average time required to complete the entire enforcement process for cases resulting in formal discipline was 1152 days. The Board’s enforcement staff recognized the significant lag time and “became more interactive with the Office of the Attorney General” resulting in a decrease from 1152 to 949 for completion of cases referred to the Attorney General for formal discipline.

The Committee is encouraged by the recent decrease to the processing time, but remains concerned that the Board’s 540 day target time frame is still being exceeded by a significant quantity. The Committee is also concerned with the potential harm to the public that may be incurred if an unscrupulous licensee continues to practice during a lengthy disciplinary case review by the Attorney General.

**Staff Recommendation:** *The Committee recommends that the Board specify how they “became more interactive” with the Attorney General’s office and indicate what additional measures can be taken to expedite processing of enforcement cases.*

## **ISSUE #9: What has contributed to increased complaints?**

**Background:** In its recent report to the Committee, the Board indicated that case loads for complaints “...are steadily increasing each year. Cases are becoming increasingly complex.” The Board attributes this increase to the increase in the licensing population. The Board has the option of utilizing the Sworn Investigators from the MBC. However, the Board indicated that they only utilize the MBC’s officers Sworn Investigators on less than 1/3 of the enforcement cases (Conversation with Angie Burton, Executive Director, Board on February 14, 2013).

Considering the Board’s noted difficulty monitoring enforcement cases, the Committee is concerned about the Board’s ability to continue monitoring enforcement cases.

**Staff Recommendation:** *The Committee recommends that the Board indicate how they plan to address the increasing number of enforcement cases. The Committee recommends that the Board consider getting additional assistance with enforcement from the MBC?*

## **ISSUE #10: Should the OMB utilize the Franchise Tax Board’s Interagency Intercept Collections program (IIC)?**

**Background:** The Franchise Tax Board is responsible for administering the IIC program. The IIC intercepts (offsets) refunds when individuals have delinquent debts owed to government agencies and California colleges. The types of intercepted payments include personal income tax refunds, lottery winnings, and unclaimed property disbursements.

In its recent report to the Committee, the Board indicated that it does not utilize the Franchise Tax Board’s program to collect outstanding fines.

The Committee is concerned that the Board is not using the Franchise Tax Board's intercepts to collect outstanding fines.

**Staff Recommendation:** *The Board should provide an explanation detailing why it is not using the Franchise Tax Board's intercepts.*

## **STAFFING**

### **ISSUE #11: Why was the Board's budget change proposal (BCP) denied?**

**Background:** The Osteopathic Medicine Act provides authority for the Board to regulate the profession of osteopathic medicine. The Board is charged with protecting its licensees and the consumers of osteopathic medicine. Included in the Board's basic authority is the ability for the Board to approve or deny licenses, take enforcement actions, pursue legislation, and conduct administrative duties.

In its recent report to the Committee, the Board indicated that there have been various constraints that have affected its ability to carry out its mandates. Specifically, the following deficiencies were noted:

1. No major studies have been conducted.
2. No consumer outreach efforts have been initiated
3. No participation in national organizations such as the FSMB
4. Inability to process licenses in a timely manner
5. No NLI notifications are sent to DOJ
6. Inefficiency processing and renewing applications
7. Minimal cite and fine is utilized
8. Limited use of the Board's website to post information for the public
9. No meetings are webcast

The Board reported that these deficiencies are directly related to a lack of staff that would be responsible for completing these salient tasks. Currently, the Board has an Executive Officer and five additional support staff. Additionally, the Board reported that their 2013-2014 BCP for additional staff was denied by DCA.

The Committee is extremely concerned about the Board's ability to regulate the profession as they have limited staff which prevents them from performing essential tasks that will help ensure consumer protection.

**Staff Recommendation:** *The Board should inform the Committee of its plan to continue carrying out its various duties if no additional staff is allocated for the Board. The Board may want to explore the possibility of hiring temporary or part-time staff to assist with completing critical tasks. Additionally, the Committee encourages the Board to seriously consider the benefits of merging with the MBC in order to ensure that the essential duties of the Board are carried out in the spirit of consumer protection.*

**Continued Regulation of the Profession by the  
Current Members of the Board**

**ISSUE #11: Should the current Board continue to license and regulate DOs?**

**Background:** The health and safety of consumers is protected by well-regulated professions. The Board is charged with protecting the consumer from unprofessional and unsafe licensees.

**Staff Recommendation:** *The Committee recommends that DOs continue to be regulated by the current Board and be renewed again in four years. The Committee maintains its position, and will raise the issue again, that during their four year extension, the Board should seriously consider merging with the MBC.*