BACKGROUND PAPER FOR
The Podiatric Medical Board of California

Joint Sunset Review Oversight Hearing, March 17, 2020
Senate Committee on Business, Professions and Economic Development and the Assembly Committee on Business and Professions

IDENTIFIED ISSUES, BACKGROUND AND RECOMMENDATIONS REGARDING THE PODIATRIC MEDICAL BOARD

BRIEF OVERVIEW OF THE PODIATRIC MEDICAL BOARD

History and Function of the Podiatric Medical Board of California

The Podiatric Medical Board of California (PMBC) is a licensing board within the Department of Consumer Affairs (DCA) tasked with oversight of practitioners of podiatric medicine (podiatrists) and administers and enforces the laws relating to licensure. Podiatric medicine is a branch of medicine that focuses on the foot and ankle. In California, it is defined as "the diagnosis, medical, surgical, mechanical, manipulative, and electrical treatment of the human foot, including the ankle and tendons that insert into the foot and the nonsurgical treatment of the muscles and tendons of the leg governing the functions of the foot" (Business and Professions Code [BPC] § 2472(b)). It is unlawful to practice podiatric medicine without a license and licensed podiatrists are known as Doctors of Podiatric Medicine (DPMs).

Prior to 1957, the licensing of podiatrists was carried out directly by the Board of Medical Examiners (now the Medical Board of California [MBC]). In 1957, the Chiropody Examining Committee was established after the professional association had petitioned for an independent licensing board, but the Legislature authorized a committee under MBC comprised of five licensed podiatrists and one member of the public, ultimately named the Podiatry Examining Committee in 1961. The Committee received applications, conducted examinations, and recommended applicants for licensure to MBC. In 1986, the Podiatry Examining Committee became an independent board, the California Board of Podiatric Medicine (BPM), which relied on MBC only for contractually specified duties, which the MBC provides for other independent boards whose licensing population was previously regulated by the MBC's former Division of Allied Health Professions or by a committee under MBC. The BPM was independently responsible for determining the eligibility of its licensees and making final disciplinary decisions. In 1998, the BPM composition changed to four licensees and three members of the public, the current makeup. Pursuant to legislation (AB 2457, Irwin, Chapter 102, Statutes of 2018), BPM was renamed PMBC as of July 1, 2019.

As stated in its 2019-2022 Strategic Plan, the PMBC's mission is:

> ***To protect and educate consumers of California through licensing, enforcement, and regulation of doctors of podiatric medicine.***

According to PMBC, its vision is that all California licensed podiatric medical doctors will provide safe and competent foot and ankle care. PMBC's stated values are consumer protection, effectiveness, fairness, professionalism, service, and transparency. PMBC is responsible for the licensing, regulation, and discipline of the practice of podiatric medicine, with public protection as PMBC's highest priority.

PMBC currently licenses approximately 2,250 podiatric practitioners statewide. DPMs are licensed to diagnose and treat conditions affecting the foot, ankle and related structures including the tendons that insert into the foot, and to diagnose and provide medical treatment of the muscles and tendons of the leg through all nonsurgical means and modalities. Unlike a physician and surgeon, whose scope is only limited by the licensee's own area of competence, a DPM's scope is statutorily limited to the foot and ankle. DPMs are authorized to perform surgeries within their scope of practice, including surgical treatment of the ankle and tendons at the level of the ankle, in certain locations, such as a licensed general acute care hospital, and a partial amputation of the foot no further proximal than the Chopart's joint. They are also authorized to perform services under the direct supervision of a physician and surgeon, as an assistant at surgery, in surgical procedures that are otherwise beyond a DPM's scope of practice. According to PMBC, DPMs are also highly specialized in sports medicine, biomechanics, and the care and management of the diabetic foot and lower limb, and are specially trained to treat foot conditions that can be caused by diabetes, such as neuropathy, infections, and ulcers.

The Governor appoints PMBC's four DPM members and one public member. The Senate Committee on Rules and Speaker of the Assembly each appoint one public member. BPC § 2465 specifies that board members cannot own or have interest in an institution engaged in podiatric medical instruction. All board members are appointed to 4-year terms, limited to two consecutive terms. All Board meetings are subject to the Bagley-Keene Open Meetings Act. PMBC reports that it has not had to cancel any meetings due to issues with obtaining a quorum. There is currently one vacancy. The following is a listing of the current PMBC members and their background:

Board Member	**Appointment Date**	**Term Expiration**	**Appointing Authority**
Judith Manzi, DPM, President Dr. Manzi has been a senior physician at Kaiser Permanente Santa Clara Medical Center since 2001, where she was a staff physician from 1998 to 2001. She was a podiatrist in private practice at the Sunnyvale Foot and Ankle Center from 1984 to 1998 and chairman of the Ohio College of Podiatric Medicine Department of Surgery from 1982 to 1984. Dr. Manzi earned a Doctor of Podiatric Medicine degree from the Temple University School of Podiatric Medicine. She currently serves as President of The Federation of Podiatric Medical Board. She also is a member of The Permanente Medical Group Legislative Forum. Dr. Manzi is Director of Research of the South Bay Consortium Residency Program as well as Administrator of Podiatric Externship Kaiser South Bay Consortium Program.	9/3/14	6/1/22	Governor
Darlene Trujillo Elliot, Vice-President Darlene Trujillo Elliot is an avid community volunteer, logging more than 400 hours annually and leading many community events. She is a board member for TruEvolution and current President for the Riverside Latino Network. In 2012, she cofounded a foundation with two of her cousins called Spanish Town Heritage, with the mission to champion Hispanic/Latino legacy by sharing the stories of the Inland Empire's first settlers, creating cultural learning opportunities, leading community efforts to restore and revitalize La Placita de Los Trujillo's, a place in	1/27/16	1/1/23	Senate Committee on Rules

history, learning, entertainment and the arts. Ms. Elliot has received several awards for her community service, including Latino Network's Celebración de la Mujer, Outstanding Community Service Award by the Allen Chapel AME Church, in Riverside, and Greater Riverside Hispanic Chamber of Commerce Josie Lozano Memorial Award for community service and political activism.			
Maria Cadenas, Secretary Maria Cadenas is the principal of Cadenas Consulting and the Executive Director of Santa Cruz Community Ventures, a non-profit focused on developing an inclusive economy. Ms. Cadenas received her BA from Beloit College and MBA from Alverno College. A 2017 Hispanics Organized for Political Equality Leadership Institute fellow, she chairs the Diversity Partnership Fund of the Community Foundation Santa Cruz, sits on the finance committee for Pajaro Valley Community Health Trust, and is a Board Member of New Way Homes. She is former member of national board of Funders for LGBTQ Issues, Steering Committee for Sustainable Ag and Food System Funders, and the Stewardship Council of Roots of Change.	10/11/17	1/1/22	Governor
Neil B. Mansdorf, DPM Dr. Neil Mansdorf, of Irvine, has been sole practitioner since 2000. Previously, he was a doctor of podiatric medicine with Cupertino Podiatry Group from 1999 to 2000. Dr. Mansdorf is a member of the Radiologic Technology Certification Committee's Board of Directors and California Podiatric Medical Association. He is a fellow with the American College of Foot and Ankle Surgeons, an associate with the American Academy of Podiatric Sports Medicine and immediate past president of the Orange County Podiatric Medical Association.	12/21/12	6/1/20	Governor
Carolyn McAloon, DPM Dr. McAloon is a graduate of University of California, Berkeley and earned a DPM degree from the California College of Podiatric Medicine in San Francisco. She completed both her primary podiatric medicine and surgical residencies at the Veterans Affairs Palo Alto Healthcare Systems in Palo Alto, California. A board-certified podiatric physician and surgeon, Dr. McAloon is a past president of the California Podiatric Medical Association (CPMA), and a member of the American Podiatric Medical Association (APMA) and the Alameda/Contra Podiatric Medical Society. She is a Fellow of the American College of Foot and Ankle Surgeons (ACFAS) and a Diplomate of the American Board of Foot and Ankle Surgery (ABFS). Dr. McAloon is the co-owner of her private practice, Bay Area Foot Care.	12/28/18	6/1/20	Governor
Michael A. Zapf, DPM Dr. Michael Zapf holds a BS degree in Microbiology from California State University, Long Beach, and a Master of Public Health degree from UCLA specializing in Infectious and Tropical Diseases. After a short career as a Public Health Microbiologist and a laboratory inspector for the State of California, he returned to academia and received a Doctor of Podiatric Medicine degree in 1984 from the California College of Podiatric Medicine. He is the founding member of the Agoura-Los Robles Podiatry Centers with offices in Agoura Hills and Thousand Oaks. In addition to his podiatric medicine and surgery career, he has been a board member of the Conejo Free Clinic which serves 5000 poor and uninsured patients annually and he helped his Rotary Club launch Operation Footprint where more than 500 Honduran children have received life changing foot and ankle surgeries.	1/10/13	6/1/20	Governor

The PMBC has five standing committees composed of two board members which are advisory in nature. PMBC advises that the committees also address succession planning by assigning new

members to committees chaired by more senior members who are able to share their knowledge and expertise about PMBC. They research, discuss policy, and report information during public board meetings. PMBC's committees are:

- *Executive Management Committee.* The Executive Management Committee is made up of the Board's president and vice-president and may also include the next ranking member of the Board or another member appointed by the Board president for a total of three members. In the event that the committee is comprised of three or more members, the committee abides by all open meetings requirements. The Committee provides guidance to PMBC staff for the budgeting and organizational components of the Board and is responsible for implementing recommendations made by the Board's other committees.

- *Enforcement Committee.* The Enforcement Committee is responsible for the initial development and review of Board-adopted policies, positions and disciplinary guidelines. Although the Enforcement Committee does not review individual enforcement cases, it is responsible for policy development of the enforcement program, pursuant to the provisions of the Administrative Procedure Act (APA), for consideration by the Board.

- *Licensing Committee.* The Licensing Committee is responsible for the initial review and development of regulations regarding educational and professional ethics course requirements for initial licensure and continuing education programs. The committee monitors various education criteria and requirements for licensure, taking into consideration new developments in technology, podiatric medicine and current activity in the health care industry.

- *Legislative Committee.* The Legislative Committee is responsible for monitoring and making recommendations to the Board on legislation impacting the Board's mandate. This committee may also recommend pursuit of specific legislation to advance the mandate of the Board or propose amendments or revisions to existing statutes for advancing the same.

- *Public Education/Outreach Committee.* The Public Education/Outreach Committee is responsible for the development of consumer outreach projects, including the Board's newsletter, website, e-government initiatives and outside organization presentations on public positions of the Board. The members of this committee may act as goodwill ambassadors and represent the Board at the invitation of outside organizations and programs. In all instances, members must only present positions of the Board and members do not express or opine on matters unless explicitly discussed and decided upon by the Board.

PMBC is a member of the Federation of Podiatric Medical Boards.

PMBC's meeting agendas are posted on the PMBC website at least 10 days prior to the meeting date. PMBC also links meeting materials to the agenda about a week prior to the meeting, including the draft minutes from the previous meeting. Meeting agendas are archived on the PMBC website dating back to 2003 where they remain posted indefinitely. Final meeting minutes are also posted once approved and also remain available online indefinitely. All of PMBC's recent meetings were webcast and available online. The Board plans to continue webcasting all future meetings.

PMBC provides the name, license type, primary status, school name, graduation year, and the address of record for each of its licensees publicly through the searchable BreEZe licensing database. It also

provides public records of disciplinary actions, felony convictions, malpractice judgments and settlements, probationary hospital disciplinary actions, administrative citations issued, administrative actions taken by other state or federal government, and arbitration awards.

PMBC reports that it provides outreach to licensees, stakeholders, and members of the public through its website, newsletter, and social media. Current relevant information is provided on the website that includes notices to licensees, changes in laws or regulations, and public announcements. PMBC staff has worked to update printed pamphlets to make them available in English and Spanish, with plans to translate information into additional languages. Staff attends a regional podiatric professional meeting annually, where PMBC's licensees and stakeholders are present. At this annual meeting, PMBC provides educational training to PMBC's consultants, distributes fact sheets and brochures, and answers questions.

Fiscal, Fund and Fee Analysis

PMBC is a special fund agency whose activities are funded through regulatory fees and license fees. PMBC's primary source of revenue, accounting for over 80 percent of the money PMBC brings in, are DPM license renewal fees. Certificates to practice podiatric medicine are renewed on a biennial cycle.

The following is the past, current, and projected fund condition for PMBC:

Fund Condition						
(Dollars in Thousands)	FY 2015/16	FY 2016/17	FY 2017/18	FY 2018/19	FY 2019/20	FY 2020/21
Adjusted Beginning Balance	$1,009,001	$993,000	$976,000	$776,000	$460,000	$198,000
Revenues and Transfers	989,000	947,000	982,000	1,095,000	1,173,000	982,000
Total Revenue	$1,998,001	$1,940,000	$1,958,000	$1,871,000	$1,633,000	$1,180,000
Budget Authority						
Expenditures	$1,003,000	$964,000	$1,182,000	$1,411,000	$1,435,000	$1,497,910
Loans to General Fund	0	0	0	0	0	0
Accrued Interest, Loans to General Fund	0	0	0	0	0	0
Loans Repaid from General Fund	0	0	0	0	0	0
Fund Balance	$995,001	$976,000	$776,000	$460,000	$198,000	($317,910)
Months in Reserve	12.4	9.9	6.6	3.8	1.6	-2.5

In 2005, DPM fees increased from $800 to $900. Since the prior sunset review, PMBC requested and received authority to increase fees temporarily by $200 per licensee for one renewal cycle in SB 1480 (Hill, Chapter 571, Statutes of 2018), a move that the Board believes needs to be made permanent. The PMBC also advises that an additional $218 for each renewal is needed to maintain PMBC's reserve. As of October 11, 2019, PMBC had 3.8 months in reserve. PMBC advises that expenditures are currently exceeding revenues, which is causing a structural imbalance of the fund. While there is no statutory reserve level, PMBC notes that the minimal goal of 12-months in reserve is desired to maintain a prudent fund condition. PMBC fees are discussed further in Issue #3 below.

Fee Schedule and Revenue (dollars in thousands)							
Fee	Current Fee Amount	Statutory Limit	FY 2015/16 Revenue	FY 2016/17 Revenue	FY 2017/18 Revenue	FY 2018/19 Revenue	% of Total Revenue
Resident's License (j)[9]	100	100	2,831	2,460	2,580	4,869	0.3%
Duplicate License (f)	100	100	870	1,600	1,000	1,480	0.1%
Letter of Good Standing (i)	100	100	1,260	1,050	840	2,600	0.1%
CME Course Approval (k)	100	100	0	100	0	0	0.0%
Citation Fee (BPC 125.9)	VAR	500	0	900	2,250	2,050	0.1%
Application Fee (a)	100	100	1,840	1,880	2,140	10,040	0.4%
Fictitious Name Permit (BPC 2443)	50	50	1,100	1,100	1,700	2,100	0.1%
Initial License (b)	800	800	64,800	68,809	80,780	90,400	7.1%
Fictitious Name Renewal (BPC 2443)	40	40	5,160	4,960	6,440	6,000	0.5%
Biennial Renewal (c)(d)	1,100	900	877,774	822,758	859,788	918,124	81.1%
DPM Delinquent Fee (e)	150	150	2,550	750	1,650	1,788	0.2%
Fictitious Name Permit – Delinquent Renewal Fee (BPC 2443)	20	20	100	80	480	250	0.0%
Penalty Fee (BPC 2424(b)(2))	450	450	4,500	1,800	1,800	3,150	0.3%

PMBC expended the following amounts for BreEZe costs: $28,922 in FY 2015/16, $27,134 in FY 2016/17, $27,000 in FY 2017/18, and $23,000 in FY 2018/19 $23,000. PMBC has not received the anticipated costs from DCA for FY 2019/20, however, the annual costs are anticipated to be approximately $25,000.

While PMBC is authorized for only 5.2 positions, administrative costs, which include staff salaries and DCA Pro Rata, greatly exceed regulatory expenditures like licensing and enforcement. This topic is discussed further in Issue # 1 below.

Expenditures by Program Component (dollars in thousands)				
	FY 2015/16	FY 2016/17	FY 2017/18**	FY 2018/19**

	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E	Personnel Services	OE&E
Enforcement	75	301	67	306	82	419	87	487
Examination	0	0	0	0	0	0	0	0
Licensing	75	37	67	28	82	28	87	27
Administration *	315	109	288	82	340	84	372	83
DCA Pro Rata	N/A	136	N/A	149	N/A	134	N/A	189
Diversion (if applicable)	N/A	N/A	N/A	N/A	N/A	N/A	N/A	N/A
TOTALS	$ 465	$ 583	$ 422	$565	$ 504	$665	$ 546	$786

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

Licensing

PMBC currently licenses approximately 2,250 podiatric practitioners statewide. PMBC issues three types of certificates related to podiatric medicine: DPM, limited/resident certificate, and a fictitious name permit. PMBC issued 117 licenses in FY 2016/17, 147 licenses in FY 2017/18, and 149 licenses in FY 2018/19. These figures include a combined total for both permanent DPM licenses and resident licenses. PMBC issued 1,023 renewals in FY 2016/17, 1,098 renewals in FY 2017/18, and 1,018 renewals in FY 2018/19.

PMBC identifies applicants who indicate they are military service veterans or spouses. PMBC has received 8 new DPM applications for waivers from license renewal fees and continuing education requirements for military reservists called to active duty pursuant to BPC Section 114.3 and one application that qualified for the expedited license available to military spouses and domestic partners of a military member who is on active duty in California pursuant to BPC Section 115.5.

PMBC approves schools of podiatric medicine. Colleges of podiatric medicine that are accredited by the national Council on Podiatric Medical Education (CPME) may be approved by the PMBC, however, PMBC is authorized to remove approval of any institution, regardless of accreditation, that does not meet the statutorily defined curriculum requirements or regulation. There are nine CPME-accredited and PMBC-approved podiatric medical schools and colleges in the United States. These schools are reviewed by CPME every eight years, or sooner, depending on the success of the institution in demonstrating continuing compliance with their educational program standards. CPME may institute focused evaluations and/or place accredited educational institutions on probationary status in order to address specific concerns.

DPM candidates for licensure must possess a Certificate of Podiatric Medical Education, consisting of a minimum of 4,000 hours of academic instruction from a board-approved school, must pass Parts I, II, and III of the national examinations, and must complete two years of graduate medical education

residency. PMBC also requires podiatric residents participating in California-based podiatric graduate medical education residency programs to be licensed. DPMs licensed in another state must demonstrate that they: graduated from an approved school or college of podiatric medicine accredited CPME; passed either Part III of the examination administered by the National Board of Podiatric Medical Examiners (NBPME) or an examination recognized as equivalent by the board within the last 10 years; and satisfactorily completed one year of post-graduate medical education as opposed to two in order to be considered for licensure in California by PMBC.

PMBC requires passage of the American Podiatric Medical Licensing Examination (APMLE), a national examination administered by the NBPME. PMBC also allows applicants to pass an exam PMBC determines is equivalent to the AMPLE. Applicants must sit for and pass APMLE Parts I and II while attending podiatric medical school in order to qualify for a Resident's License and participate in California based post-graduate medical training program. The NBPME has added an additional component to the Part II exam, the Part II Clinical Skills Patient Encounter (Part II CSPE). This exam assesses proficiency in podiatric clinical tasks needed to enter residency. Only those persons in the class of 2015, excluding the class of 2016, and continuing with the class of 2017, are required to pass both the Part II written and the Part II CSPE.

During post-graduate residency training an applicant must also sit and pass APMLE Part III, which is the clinical competence component of the examination in order to satisfy the requirements for full licensure as a DPM. Currently, the NBPME does not offer examinations in a language other than English. According to PMBC, first-time examinee passage rates range from a low of 85% in FY 2017/18 to a high of 100% in FY 2018/19 for an average pass rate of 91% during the past four fiscal years (FYs).

PMBC requires that a criminal record clearance be obtained through both the California Department of Justice and the Federal Bureau of Investigation. As part of the application for licensure with PMBC, the applicant must arrange to have the national disciplinary databank report regarding the applicant sent directly to PMBC for review by PMBC prior to issuance of a license. PMBC reviews these reports for information regarding existing malpractice suits filed or adverse actions taken against the applicant by a licensing entity in another state in determining the applicant's qualification for licensure in California. Applicants currently or previously licensed in another state or states are required to have each respective state licensing agency submit a license verification containing current status and any existing disciplinary actions or investigations directly to PMBC. In the past four FYs, PMBC has not denied any applications for failure to disclose information or criminal history information on the application. The issue of prior criminal convictions is discussed further in Issue #5 below.

The Federation of Podiatric Medical Boards (FPMB) receives disciplinary information from member licensing boards. The PMBC submits disciplinary actions regarding its licensees to the FPMB within 30 days of the disciplinary action effective date.

Continuing Education (CE)/Continuing Medical Education (CME)

PMBC requires of 50 hours of approved CME every two years, including a minimum of 12 hours in subjects relating to the lower extremity muscular skeletal system. In addition to completing 50 hours of approved CME, licensees must also satisfy one of the following eight continuing competence pathways:

1) Passage of an examination administered by the PMBC within the past 10 years.

2) Passage of an examination administered by an approved specialty certifying board within the past 10 years.

3) Current diplomate, board-eligible, or board-qualified status granted by an approved specialty certifying board within the past 10 years.

4) Recertification of current status by an approved specialty certifying board within the past 10 years.

5) Successful completion of an approved residency or fellowship program within the past 10 years

6) Grant or renewal of current staff privileges within the past 5 years by a health care facility that is licensed, certified, accredited, conducted, maintained, operated, or otherwise approved by an agency of the federal or state government or an organization approved by the MBC.

7) Successful completion within the past 5 years of an extended course of study approved by the PMBC.

8) Passage within the past 10 years of Part III of the examination administered by the NBPME.

Licensees are required to submit proof of compliance with these requirements every two years as a condition of license renewal, although PMBC has regulatory discretion to waive CE requirements temporarily or permanently if the individual applies demonstrates an inability to comply related to retirement, health, military service, or undue hardship. PMBC verifies CE and mandated continuing competency requirements through licensee self-reporting; licensees submit a signed declaration of compliance to PMBC under penalty of perjury during each two-year renewal period for every licensee. PMBC is authorized to audit a random sample of its licensees to confirm compliance with CE and continuing competency requirements, once each year. PMBC reports that it conducted four CE audits in the past four FYs. Out of 234 licensees randomly selected for CE audit in the past four FYs, six have failed for a less than three percent failure rate. In addition to the failures, 18 of the licensees selected for audit were granted a CE waiver, six had retired, one was deceased, one license had been revoked and five licensees chose not to renew their license.

PMBC approves CE course providers and organizations and institutions that offer CE. While PMBC does not actively audit CE providers, the PMBC advises that its policy is to withdraw the approval of any individual, organization, institution or other CE provider that does not comply with PMBC course criteria requirements.

Enforcement

The enforcement process begins with a complaint. PMBC reports that it received an average of 158 complaints for the prior three FYs, 67% of which came from consumers. Complaints are received by MBC's Central Complaint Unit which starts the process of determining next steps for a complaint. Cases involving gross negligence, incompetence and repeated negligent acts involving death or serious bodily injury are identified as holding the highest priority as mandated by statute. Cases involving drug and alcohol use, sexual misconduct with patients, repeated acts of excessive prescribing with or

without examination and excessive furnishing or administering of controlled substances are also defined as priorities. For complaints that are subsequently investigated and meet the necessary legal prerequisites, a Deputy Attorney General (DAG) in the Office of the Attorney General (OAG) drafts formal charges, known as an "Accusation". An accusation is filed and a hearing before an Administrative Law Judge (ALJ) is subsequently scheduled, at which point settlement negotiations take place between the DAG, DPM and his or her attorney and enforcement staff. Often times these result in a stipulated settlement, similar to a plea bargain in criminal court, where a licensee admits to having violated charges set forth in the accusation and accepts penalties for those violations. A settlement, formally negotiated and settled prior to hearing, can result in:

- Revocation – the right to practice ceases, and the license is invalidated, voided, annulled, or rescinded.
- Surrender – a licensee gives up their license in order to resolve a disciplinary action.
- Suspension from practice – a licensee is prohibited from practicing for a specific period of time.
- Revocation is stayed and the individual is placed on probation with terms and conditions – the revocation is postponed, subject to compliance with the specified terms and conditions, during which professional practice may continue so long as the licensee complies with specified probationary terms and conditions. Some probations may also include a period of suspension. Violation of any term of probation may result in the revocation that was stayed.
- Probationary license – a conditional license issued to an applicant with probationary terms and conditions. This is done when PMBC has cause for licensure denial, but limitations can be put in place to protect the public, while still granting a license.
- Public Letter of Reprimand – an additional form of discipline detailing the improper conduct engaged in by the licensee and included in the licensee's file, including on the PMBC's website. The reprimand may include a requirement that the licensee undergo additional educational and clinical training requirements.

77% of formal discipline cases resulted in a settlement. If a licensee contests charges, the case is heard before an ALJ who subsequently drafts a proposed decision which the PMBC adopts, rejects, or amends.

PMBC has closed 74% of all investigations in 180 days or less in the last four FYs, which is comparable to the 71% of cases closed in this timeframe that the PMBC reported during the prior sunset review. 6% of cases still take longer than two years to complete, delays for which are usually caused by field investigations which end up being submitted to OAG for formal disciplinary action. Approximately 8 actions are initiated per year by the OAG, about 5.3% of complaints. For these cases that result in formal disciplinary action, PMBC enforcement statistics reflect an average 1,080-day cycle for case completion, 283 days longer than was reported during the prior sunset review, which PMBC attributes to a high number of vacancies in the unit within DCA's Division of Investigation (DOI) that conducts field investigations. 40% of cases referred to OAG closed in two years or less, 39% closed between two and four years, and the remaining 21% of cases took over four years to close.

There are a significant number of reporting requirements outlined designed to inform PMBC about possible matters for investigation, including:

BPC 801.01 requires PMBC to receive reports of settlements over $30,000 or arbitration awards or civil judgments of any amount. The report must be filed within 30 days by either the insurer providing professional liability insurance to the licensee, the state or governmental agency that self-insures the licensee, the employer of the licensee if the award is against or paid for by the licensee or the licensee if not covered by professional liability insurance.

BPC 802.1 requires DPMs to report indictments charging a felony and/or any convictions of any felony or misdemeanor, including a guilty verdict or plea of no contest.

BPC Section 802.5 requires a coroner who receives information, based on findings reached by a pathologist that indicates that a death may be the result of a DPM's gross negligence, to submit a report to PMBC. The coroner must provide relevant information, including the name of the decedent and attending physician or podiatrist, as well as the final report and autopsy information.

BPC Sections 803 and 803.5 require the clerk of a court that renders a judgment that a licensee has committed a crime, or is liable for any death or personal injury resulting in a judgment of any amount caused by the licensee's negligence, error or omission in practice, or his or her rendering of unauthorized professional services, to report that judgment to PMBC within 10 days after the judgment is entered. In addition, the court clerk is responsible for reporting criminal convictions to PMBC and transmitting any felony preliminary hearing transcripts concerning a licensee to PMBC.

BPC Section 805 is one of the most important reporting requirements that allows PMBC to learn key information about a DPM. Section 805 requires the chief of staff and chief executive officer, medical director, or administrator of a licensed health care facility to file a report when a DPM's application for staff privileges or membership is denied, or the physician's staff privileges or employment is terminated or revoked for a medical disciplinary cause. The reporting entities are also required to file a report when restrictions are imposed or voluntarily accepted on the physician's staff privileges for a cumulative total of 30 days or more for any 12-month period. The report must be filed within 15 days after the effective date of the action taken by a health facility peer review body.

BPC Section 805.01 is a similarly extremely important requirement. The law requires the chief of staff and chief executive officer, medical director, or administrator of a licensed health care facility to file a report within 15 days after the peer review body makes a final decision or recommendation to take disciplinary action which must be reported pursuant to section 805.

This reporting requirement became effective January 2011 and is only required if the recommended action is taken for the following reasons:

- Incompetence, or gross or repeated deviation from the standard of care involving death or serious bodily injury to one or more patients in such a manner as to be dangerous or injurious to any person or the public.

- The use of, or prescribing for or administering to him/herself, any controlled substance; or the use of any dangerous drug, as defined in BPC Section 4022, or of alcoholic

beverages, to the extend or in such a manner as to be dangerous or injurious to the licentiate, or any other persons, or the public, or to the extent that such use impairs the ability of the licentiate to practice safely.

- Repeated acts of clearly excessive prescribing, furnishing or administering of controlled substances or repeated acts of prescribing, dispensing, or furnishing of controlled substances without a good faith effort prior examination of the patient and medical reason therefor.

- Sexual misconduct with one or more patients during a course of treatment or an examination.

The purpose of 805.01 reports is to provide PMBC with early information about these serious charges so that PMBC may investigate and take appropriate action to further consumer protection at the earliest possible moment. Accordingly, for any allegations listed above, the Legislature determined that an 805.01 report must be filed once a formal investigation has been completed, and a final decision or recommendation regarding the disciplinary action to be taken against a DPM has been determined by the peer review body, even when the DPM has not yet been afforded a hearing to contest the findings.

BPC Section 805.8 requires a health care facility, the administrator or chief executive officer of a health care service plan, or other entity that makes any arrangement under which a licensed health care professional is allowed to practice in or provide care for patients (including but not limited to a private postsecondary educational institution), to file a report of sexual abuse or sexual misconduct (defined as inappropriate contact or communication of a sexual nature) made against a DPM by a patient, if the patient makes the allegation in writing, to PMBC, within 15 days of receiving the written allegation of sexual abuse or sexual misconduct. The law also specifies that any failure to file the report of alleged sexual abuse or sexual misconduct is punishable by a fine of up to $50,000 per violation, paid by the health care facility or other entity required to report and specifies that a willful failure (a voluntary and intentional violation of a known legal duty) to file the report of alleged sexual abuse or sexual misconduct is punishable by a fine of up to $100,000 per violation.

PMBC's reports that its cite and fine authority has historically been employed both as an educational and compliance measure. According to PMBC, while citations and fines are recognized as an effective tool for demonstrating PMBC's willingness and ability to enforce the law, the system for issuance of citations has not traditionally been utilized for violations of the law that are more technical in nature like failure to provide an updated address. PMBC reports that it issued 14 citations during FYs 2015/16, 2016/17, 2017/18, and 2018/19 for various minor violations of the law but also noted that some of the most common violations are unprofessional conduct, failure to maintain adequate and accurate medical records, and practice under a false or fictitious name without a fictitious name permit. PMBC states that it also uses citation and fine authority as an effective tool for gaining compliance with some probationary terms, including when a probationer is behind in cost recovery or probation monitoring costs.

PMBC has statutory authority to enforcement costs from licensees for cases that result in formal discipline. PMBC has ordered a total of $203,904.10 in total cost recovery stemming from 15 disciplinary cases during the last four FYs.

PRIOR SUNSET REVIEW: CHANGES AND IMPROVEMENTS

PMBC was last reviewed by the Legislature through sunset review in 2016. During the previous sunset review, 11 issues were raised. In December 2019, PMBC submitted its required sunset report to the Senate Committee on Business, Professions and Economic Development and Assembly Committee on Business and Professions (Committees). In this report, PMBC described actions it has taken since its prior review to address the recommendations made. Issues which were not addressed and which may still be of concern to the Committees are more fully discussed under "Current Sunset Review Issues."

- **PMBC updated its Strategic Plan.** In 2018, PMBC updated its Strategic Plan (2019-2022) and continues to monitor specific goals outlined in the plan. Participation by board members and staff, as well as the responses from a stakeholder survey, assured that the public and stakeholders were considered in planning PMBC's future activities.

- **PMBC works with schools to inform potential licensees of the licensing process and licensing requirements.** According to PMBC, it meets with deans, faculty, and school administrators to ensure that California's requirements for DPM licensure are easily accessible and understood by applicants. PMBC implemented a plan to hold board meetings at the two podiatric medical schools in California and as a result, outreach between PMBC and the current podiatric student body in California has been strengthened.

- **Ankle certification references were removed**. The Committees believed that reference to "ankle certification" should be eliminated from the statute in order to confirm a single source of licensure for DPMs. The language was amended out of the statute in SB 798 (Hill, Chapter 775, Statutes of 2017).

- **Statutory clarifications were made to confirm PMBC's direct role in overseeing DPMs.** Historically, MBC issued certificates to practice podiatric medicine to qualified applicants because the former committee was under MBC's jurisdiction. PMBC determines the qualifications for licensure, reviews applications and subsequently makes all decisions about DPM licensure and until 2016 when the Board transitioned to the BreEZe system, issued its own licenses to its own licensees. However, for these licensees, the actual pieces of paper included a MBC seal, despite being separate from the licenses issued by MBC for physicians and surgeons, due to the lack of proper statutory code cleanup recognizing the PMBC as an independent entity and clarifying how certificates for licensure were issued. Once this situation was discussed and concerns were raised, it was determined that MBC staff, through a shared services agreement, would update the BreEZe system to issue a DPM license on behalf of the PMBC. The MBC did nothing more than update the system to reflect the independent licensure decision of the PMBC. In order to clarify that PMBC is its own board that performs its own licensing functions so that the law accurately reflects the true nature of each independent entity and each licensing board's actual responsibilities, statutory changes were made in SB 798 (Hill, Chapter 775, Statutes of 2017).

- **DPM practice was broadened.** AB 1153 (Low, Chapter 793, Statutes of 2017) allows DPMs with specific training to provide medical treatments or wound care for patients suffering from diabetes complications and other lower limb diseases.

CURRENT SUNSET REVIEW ISSUES FOR THE PODIATRIC MEDICAL BOARD OF CALIFORNIA

The following are unresolved issues pertaining to the PMBC, or areas of concern that should be considered, along with background information for each issue. There are also Committee staff recommendations regarding particular issues or problem areas PMBC needs to address. PMBC and other interested parties have been provided with this Background Paper and PMBC will respond to the issues and staff recommendations.

ADMINISTRATIVE AND BUDGET ISSUES

ISSUE # 1: (ADMINISTRATIVE COSTS.) Programs within DCA like PMBC are charged for administrative services the DCA provides. PMBC's administrative expenditures continue to skyrocket and it is unclear what exact services PMBC receives for the large amount of money paid. What is the impact of Pro Rata on PMBC's fund condition?

Background: DCA's brochure *Who We Are and What We Do* states that boards operate independently and only rely on DCA for administrative support. DCA is 99% funded by a portion of the licensing fees paid by California's state-regulated professionals in the form of "pro rata." Pro rata funds DCA's two divisions, the Consumer and Client Services Division (CCSD) and the DOI. CCSD contains the Administrative and Information Services Division (the Executive Office, Legislation, Budgets, Human Resources, Business Services Office, Fiscal Operations, Office of Information Services, Equal Employment Office, Legal, Internal Audits, and SOLID training services), the Communications Division (Public Affairs, Publications Design and Editing, and Digital Print Services), and the Division of Program and Policy Review (Policy Review Committee, Office of Professional Examination Services, and Consumer Information Center). The DOI provides law enforcement investigative services for the boards, bureaus, programs, committees, and commissions within DCA. All DOI peace officers are authorized to conduct criminal and administrative investigations, obtain and execute search warrants, and make arrests anywhere in California. PMBC's cases are handled by DOI's Health Quality Investigation Unit (HQIU). HQIU has faced significantly high vacancy rates and challenges related to the Vertical Enforcement and Prosecution model in which the investigator and OAG attorney work together on a case from the outset, rather than OAG waiting for referral of a case following an investigation.

Pro rata is apportioned primarily based on the number of authorized staff at each board, regardless of how much of DCA's services the boards say they use. DCA charges boards based on actual use for some services, such as the Office of Information Services, the Consumer Information Center, the Office of Professional Examination Services, and DOI. Based on DCA's own figures, actual pro rata costs for every board have increased an average of 112% since FY 2012-2013.

PMBC DCA Departmental
Expense Summary

FY's 2015-16 through 2018-19

	FY 2015-16	FY 2016-17	FY 2017-18	FY 2018-19		
DCA Departmental Services	**Actual Expenditures (FM 13)**	**Actual Expenditures (FM 13)**	**Actual Expenditures (PRELIM 12)**	**Year End Projections**	**4 Year Average**	**% Subtotal**
OIS Pro Rata	$66,551	$74,214	$65,785	$88,917	$73,867	39.9%
Administration	63,933	64,748	57,394	75,167	65,310	35.3%
Shared Services	35,990	44,640	39,570	28,417	37,154	20.1%
DOI Pro Rata	1,966	1,840	2,191	1,833	1,958	1.1%
Communication	4,000	7,704	6,829	3,667	5,550	3.0%
Division of	0	654	580	3,667	1,225	0.7%
Total DCA	**$172,440**	**$193,800**	**$172,349**	**$201,667**	**$185,064**	**100.0%**

Source: PMBC FI$Cal reports

PMBC is authorized for a total of 5.2 positions yet over half of PMBC's total expenditures are for administration, including pro rata paid to DCA. As discussed below, PMBC is facing a structural deficit, despite receiving additional fee authority two years ago, and despite the fact that the program employs efficiencies such as its shared services agreement with MBC. While the cost of doing business has increased across the board, it would be helpful for the Committees to understand what centralized services, if any, PMBC utilizes, at what rates, and how those factor into the substantially high costs the PMBC is paying.

Staff Recommendation: ***PMBC should provide a breakdown of services received from DCA and how those impact programmatic efficiencies.***

ISSUE # 2: (SHARED SERVICES.) PMBC continues to utilize services provided by MBC, likely enhancing cost savings. How much does PMBC currently pay for MBC enforcement services and what efficiencies in the PMBC's enforcement process are achieved through this continued collaboration?

Background: MBC provides certain services to other entities at the DCA that were formerly committees under MBC, including PMBC and the Physician Assistant Board, smaller programs that do not have near the infrastructure and administrative wherewithal that a large board like MBC does, in order to assist these boards in efficiently conducting their business. Through shared services agreements, MBC solely performs administrative functions for independent boards like PMBC. In essence, MBC is contracted to do certain work and MBC in turn charges PMBC for the time MBC staff work on behalf of PMBC for tasks like processing complaints and handling other disciplinary functions.

It would be helpful for the Committees to understand the cost for this work and the enhanced productivity for PMBC's small staff that this arrangement results in.

Staff Recommendation: ***PMBC should update the Committees on its shared services agreement with MBC and provide information about the role PMBC staff may play in prioritizing cases,***

continued costs for MBC work on PMBC's behalf, how the Boards collaborate on certain activities, and what cost savings PMBC achieves through the agreement.

<u>ISSUE # 3</u>: (FUND CONDITION AND FEES.) PMBC is projected to have a negative reserve shortly and is once again requesting increased fees. What alternatives and efficiencies in PMBC operations or consolidated services have been evaluated? Are additional fees the only option?

<u>Background</u>: PMBC reports that its current fee structure is not adequate to sustain PMBC and ensure that the Board's fund is solvent. PMBC is requesting a renewal fee increase to address a negative fund condition, projected to occur in a matter of months.

In 2017, the Legislature passed SB 547 (Hill, Chapter 429, Statutes of 2017) which increased certain PMBC fees (delinquency fees, duplicate receipt of renewal fees, letter of good standing, approval for a CE course, issuing a resident's license, etc.). During the Board's 2016 sunset review, it was reported that fees had been to their statutory maximum for over 20 years, not taking into account inflation and other cost factors. At the time the PMBC reported that fees needed to be adjusted dating back to 2001 in order to sustain a long term positive fund balance. While the Board received a statutory increase to its renewal fees in 2004, the DCA's Budget Office had also recommended that the schedule of service fees be adjusted to appropriately recover actual and reasonable costs for services provided which was never done prior to SB 547.

In 2018, the Legislature passed SB 1480 (Hill, Chapter 571, Statutes of 2018) which deleted a fee for an obsolete oral examination fee and temporarily increased renewal fees. The biennial license renewal fee was increased by $200 to $1,100 until December 31, 2020.

In May 2019, PMBC undertook a fee audit, contracting with Monetary Resources Group (MRG) to analyze licensing and enforcement performance, and revenue and expense trends, including the effects of recent fee increases; analyze the Board's fee structure to determine if fee levels are properly aligned and sufficient for the recovery of the actual cost of conducting its program; project revenues and associated costs for the next five years to determine if the fee structure is sufficient and sustainable to maintain an acceptable reserve for economic uncertainties and; establish a justifiable cost basis to assess services the Board provides when a separate fee is not provided for an unscheduled service.

The MRG report highlighted potential growth in the profession, noting that "the future is bright for podiatric medicine practitioners according to the American Association of Colleges of Podiatric Medicine (AACPM) and the US Department Labor Statistic's *Occupational Outlook Handbook*…The Bureau of Labor Statistics projects a 6% increase in podiatric physician positions from 2018 to 2028." The report also provided a comparison of annual wages across a sampling of states:

States with the Greatest Employment Opportunities for Podiatrist

State	Employment	Employment per thousand jobs	Hourly mean wage	Annual mean wage
New York	1,140	0.12	$75.46	$156,960
Florida	860	0.10	$65.47	$136,170
California	780	0.05	$58.05	$120,750
Pennsylvania	600	0.10	$65.76	$136,780
Illinois	570	0.09	$86.67	$180,270

Source: US Dept. of Labor Bureau of Labor Statistics, May 2018

The MRG report found that approximately half of PMBC's expenses are beyond its control and the PMBC's reserve balance is rapidly declining. The report provided two scenarios for fees, based on information MRG received from DCA Budget staff that indicated a goal of PMBC having a 12-month reserve. MRG suggested that at a minimum, the PMBC should make the $200 temporary renewal fee authorized by SB 1480 permanent, plus an additional $42 for each renewal, resulting in a $1,142 license renewal fee in order to provide near-term solvency. MRG also suggested an alternative, that all licensees pay $1,318 – initially and at the time of renewal. This amount reflects making the current temporary $200 fee increase permanent for renewals, plus an additional $218, and a $269 increase on initial licensees, up from $1,049. MRG also advised that PMBC should charge for unscheduled services like providing duplicate copies of receipts, etc., based on a rate of $127 per hour which absorbs the full cost of PMBC work.

The Committees need to understand what alternatives DCA, the Department of Finance, PMBC, and others have considered to ensure robust regulation of DPMs. Is it sustainable for PMBC to regulate such a small licensing population given the increased costs of doing so? What options have been discussed beyond fee increases, if any?

Staff Recommendation: ***PMBC should advise the Committees of discussions that have occurred to ensure efficient regulation of DPMs, beyond just renewal fee increases. The Committees should evaluate all options for PMBC effective functions and may wish to propose statutory changes based on additional information and discussions.***

ISSUE # 4: (INDEPENDENT CONTRACTORS.) Does the new test for determining employment status, as prescribed in the court decision Dynamex Operations West Inc. v. Superior Court, have any unresolved implications for licensees working in the PA profession as independent contractors?

Background: In the spring of 2018, the California Supreme Court issued a decision in *Dynamex Operations West, Inc. v. Superior Court* (4 Cal.5th 903) that significantly confounded prior assumptions about whether a worker is legally an employee or an independent contractor. In a case involving the classification of delivery drivers, the California Supreme Court adopted a new test for determining if a worker is an independent contractor, which is comprised of three necessary elements:

A. That the worker is free from the control and direction of the hirer in connection with the performance of the work, both under the contract for the performance of such work and in fact;
B. That the worker performs work that is outside the usual course of the hiring entity's business; and
C. That the worker is customarily engaged in an independently established trade, occupation, or business of the same nature as the work performed for the hiring entity.

Commonly referred to as the "ABC test," the implications of the *Dynamex* decision are potentially wide-reaching into numerous fields and industries utilizing workers previously believed to be independent contractors. Occupations regulated by entities under the Department of Consumer Affairs have been no exception to this unresolved question of which workers should now be afforded employee status under the law. In the wake of *Dynamex*, the new ABC test must be applied and interpreted for licensed professionals and those they work with to determine the rights and obligations of employees.

In 2019, the enactment of Assembly Bill 5 (Gonzalez, Chapter 296, Statutes of 2019) effectively codified the *Dynamex* decision's ABC test while providing for clarifications and carve-outs for certain professions. Specifically, physicians and surgeons, dentists, podiatrists, psychologists, and veterinarians were among those professions that were allowed to continue operating under the previous framework for independent contractors. However, pharmacists were not included in the bill, and some have suggested that they should be afforded an exemption to prevent unnecessary disruption to the pharmacy profession.

Staff Recommendation: ***The Board should inform the committees of any discussions it has had about the* Dynamex *decision and AB 5, and whether there is potential to impact the current landscape of the pharmacy profession unless an exemption is enacted.***

LICENSING ISSUES

ISSUE # 5: (AB 2138.) What is the status of PMBC's implementation of Assembly Bill 2138 (Chiu/Low) and are any statutory changes needed to enable the Board to better carry out the intent of the Fair Chance Licensing Act?

Background: In 2018, Assembly Bill 2138 (Chiu/Low, Chapter 995, Statutes of 2018) was signed into law, making substantial reforms to the license application process for individuals with criminal records. Under AB 2138, an application may only be denied on the basis of prior misconduct if the applicant was formally convicted of a substantially related crime or was subject to formal discipline by a licensing board. Further, prior conviction and discipline histories are ineligible for disqualification of applications after seven years, with the exception of serious and registerable felonies, as well as financial crimes for certain boards. Among other provisions, the bill additionally requires each board to report data on license denials, publish its criteria on determining if a prior offense is substantially related to licensure, and provide denied applicants with information about how to appeal the decision and how to request a copy of their conviction history. These provisions are scheduled to go into effect on July 1, 2020.

Because AB 2138 significantly modifies current practice for boards in their review of applications for licensure, it was presumed that its implementation will require changes to current regulations for every board impacted by the bill. It is also likely that the Board may identify potential changes to the law

that it believes may be advisable to better enable it to protect consumers from license applicants who pose a substantial risk to the public.

Staff Recommendation: ***PMBC should provide an update on its implementation of the Fair Chance Licensing Act, as well as relay any recommendations it has for statutory changes.***

ENFORCEMENT ISSUES

ISSUE # 6: (PROBATION NOTIFICATION.) Pursuant to legislation passed in 2018 (SB 1448, Hill, Chapter 570, Statutes of 2018), DPMs are required to provide notice to patients of probationary status. What notification should DPMs have to provide patients?

Background: Healing arts boards within the DCA that license health professionals have the authority to set their own priorities and policies and take disciplinary action against their licensees. A determination of probation is a step in a lengthy disciplinary process, conducted in accordance with the Administrative Procedures Act, and offering due process for accused licensees. Licensees may be placed on probation following the Attorney General's filing of an accusation for a variety of reasons such as gross negligence/incompetence (a common reason for probation), substance abuse, inappropriate prescribing, sexual misconduct, conviction of a felony or other miscellaneous violations. Boards utilize disciplinary guidelines which are regulations that allow boards to establish consistency in disciplinary penalties for similar offenses on a statewide basis and create uniform guidelines for violations of a particular practice act. Guidelines are used by ALJs, attorneys, licensees and others involved in a regulatory program's disciplinary process.

When a licensee is placed on probation, generally they continue to practice and interact with patients, often under restricted conditions. As such, increasing the ability of patients and the public to obtain information about health care professionals they interact with has also been the subject of various Legislative and regulatory actions. The PMBC posts information regarding probation on its website and includes final enforcement actions and a summary of the violations leading to those actions, which may include probation on the DPM's online profile.

As of July 1, 2019, DPMs are required to provide a patient or the patient's guardian or healthcare surrogate with a disclosure prior to the patient's first visit if the licensee is on probation that contains the licensee's probationary status, the length of the probation and the end date, all practice restrictions placed on the DPM by PMBC, the board's phone number, and an explanation of how the patient can find further information on the licensee's probation on the licensee's profile page on the PMBC's online license information site. For each DPM practicing under probationary terms, PMBC is required to include:

- causes alleged in the operative accusation for probation imposed pursuant to a stipulated settlement, along with a designation identifying those causes by which the licensee has expressly admitted guilt and a statement that acceptance of the settlement is not an admission of guilt for probation imposed pursuant to a stipulated settlement;

- causes for probation stated in the final probationary order for probation imposed by the board's adjudicated decision;

- causes by which the probationary license was imposed for a licensee granted a probationary license;

- length of the probation and an end date and;

- practice restrictions placed on the DPM.

Physicians and surgeons licensed by MBC and the Osteopathic Medical Board of California have to comply with probation notification requirements under more narrow circumstances, only if there is a final adjudication by MBC or OMBC following an administrative hearing, or the physician and surgeon stipulates in a settlement to any of the following:

- The commission of any act of sexual abuse, misconduct or relations with a patient or client;

- Drug or alcohol abuse directly resulting in harm to patients or the extent that such use impairs the ability of the licensee to practice safely;

- Criminal conviction involving harm to patient safety or health;

- Inappropriate prescribing resulting in harm to patients and a probationary period of five years or more.

Patients may be especially deserving of greater access to information about health care licensees on probation given the potential for future disciplinary action. A 2008 California Research Bureau (CRB) study reported that physicians who have received serious sanctions in the past are far more likely to receive additional sanctions in the future. According to the CRB report, "These findings strongly imply that disciplinary histories provide patients with important information about the likely qualities of different physicians." The CRB cited research that examined physician discipline data provided by Federation of State Medical Boards.

PMBC requested in its sunset report to the Legislature that DPMs also be limited to the narrow conditions for probation notification that physicians and surgeons have to abide by. It would be helpful for the Committees to receive more information justifying this change and an explanation as to why patients of all DPMs on probation should not be notified, given the small number of DPMs on probation and the seriousness that probationary status carries in protecting patients.

Staff Recommendation: ***PMBC should explain the impacts of transparency and patient disclosure efforts like probation notification.***

ISSUE # 7: (HQIU and OAG.) PMBC cases that are more serious and that warrant formal disciplinary action are investigated by a unit within the DCA's Division of Investigation and prosecuted by Deputy Attorneys General within a unit at the Attorney General's Office that both handle cases for other health boards. Costs to PMBC for each are high, and timeframes are lengthy for cases to be resolved. What is the status of enforcement efforts and work by HQIU and OAG?

Background: HQIU has been the source of particular Legislative focus over the past number of years. Following the 2004 release of a statutorily mandated report by an independent monitor, MBC implemented vertical enforcement (VE), requiring Deputy Attorneys General from OAG, to be involved in MBC's investigation activities as well as its prosecution activities. Despite VE and other enhancements, enforcement activities were still called into question during sunset reviews of health licensing boards. SB 304 (Lieu, Chapter 515, Statutes of 2013) required MBC to transfer its investigators, investigators who also work on PMBC's cases, to DCA's DOI, establishing the framework for the current HQIU. HQIU has faced significantly high vacancy rates and challenges, many of which were related to the formerly statutorily-required VE and challenges in coordination between HQIU investigators and DAGs in the OAG Health Quality Enforcement Section.

While PMBC cases were not mandated to be handled according to VE provisions, PMBC staff opted for all DPM enforcement cases to follow the VE model, likely leading to lengthy timeframes and significantly enhanced cost to PMBC for both HQIU and OAG charges. In July 2019, OAG hourly rates increased, specifically, attorney services went from $170 to $220 per hour, a 30% increase, and paralegal services went from $120 to $205, a 71% increase.

It would be helpful for the Committees to better understand the impact of HQIU challenges, delays in enforcement, and increased OAG costs are having on PMBC's enforcement program and enforcement costs. Has anything changed at HQIU that positively impacts PMBC investigations and enforcement? Are enforcement costs still related to the former VE program since PMBC was selecting to have cases handled like MBC cases which were required to follow VE? What is the correlation to PMBC's fund situation and increased OAG prosecution costs?

Staff Recommendation: ***PMBC should update the Committees on enforcement efforts conducted by HQIU and OAG, including trends, costs, timeframes, and efficiency efforts.***

TECHNICAL CHANGES

ISSUE # 8: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE LAWS GOVERNING THE PRACTICE OF PODIATRIC MEDICINE AND PMBC OPERATIONS.) There are amendments that are technical in nature but may improve PMBC operations.

Background: In certain instances, technical clarifications may improve PMBC operations and application of the statutes governing the PMBC's work.

Staff Recommendation: ***The Committees may wish to amend the Act to include technical clarifications.***

CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT PROFESSION BY THE PODIATRIC MEDICAL BOARD OF CALIFORNIA

ISSUE # 9: (CONTINUED REGULATION BY THE PMBC.) Should the licensing and regulation of DPMs be continued and be regulated by the current PMBC?

Background: Regulating DPMs is in the interest of California patients. The issues surrounding the PMBC's current fiscal challenges certainly warrants an evaluation of all available options to ensure an efficient regulatory structure for the profession, balancing public protection with increases in the number of podiatrists in this state.

Staff Recommendation: ***The regulation of DPMs should be continued, to be reviewed again on a future date to be determined.***