# WRITTEN RESPONSES TO CURRENT SUNSET REVIEW ISSUES FOR THE PHYSICIAN ASSISTANT BOARD

**Joint Sunset Review Oversight Hearing Date: November 19, 2020**

## *ADMINISTRATIVE ISSUES*

**ISSUE #1: (BOARD COMPOSITION). The Physician Assistant Practice Act requires that one member of the PAB include a non-voting licensee of the MBC, typical for committees within another board's jurisdiction, but not common for a stand-alone board that makes decisions about regulating a specific profession. Is the non-voting physician and surgeon appointee still relevant now that PAB exists as a board, rather than a committee under the MBC?**

**Background:** BPC § 3505 specifies the membership of the PAB. Current law requires the PAB to have four PAs, one physician and surgeon who is also a member of the MBC, and four public members. Additionally, the statute requires an additional member who is non-voting physician and surgeon who is also a member of the MBC. Essentially, the PAB has a total of 10 members, one of whom is a non-voting participant.

When all positions are filled, there are five PAs, four public members and one non-voting member. Currently, the PAB has three vacancies, including a PA member, and two public members. Additionally, the non-voting physician and surgeon slot is vacant, and has been since at least 2017, which is the last time the PAB had a physician and surgeon member actively participating at meetings.

The composition of the PAB was considered during the transition of the PAB from a committee under the jurisdiction of the MBC into an autonomous board in 2012. At the time of transition, the PAB decided to continue its use of the MBC for certain services (many of which were provided when the PAB was a Committee under the MBC's jurisdiction, including enforcement, information technology, and fund management via a contract with MBC). At that time, PAB recommended that the existing non-voting physician and surgeon member should remain on the PAB.

During the PAB's 2016 sunset review, the committee staff raised the issue of the PAB's composition and inquired as to whether or not the non-voting physician and surgeon member should be continued.

The PAB responded at that time "While eliminating the physician member is a possible solution, the PAB believes that, even as a nonvoting member, this member provides valuable input which assists the PAB in carrying out their consumer protection mandate. The PAB would not want the collaborative relationship to change. Additionally, since the PAB has a shared services agreement with the MBC in which they provide IT, cashiering, consumer complaint, and disciplinary case functions, retaining a MBC member would be beneficial to both the PAB and

MBC. The PAB recognizes that this change recently took place, and, perhaps, it is too early to make a determination if the change would impact our relationship with the MBC. The PAB respects and is committed to supporting the will of the Legislature and is committed to ensuring that the physician member of the MBC is able to successfully carry out their duties as a valued member of the PAB. Perhaps this issue could be evaluated and included in a future PAB sunset review."

Now that the PAB has been an independent board for eight years, the question arises again, as to whether or not the PAB needs to continue to have a non-voting physician and surgeon member on the PAB. It would be helpful to understand how a non-voting, licensed physician and surgeon member is still beneficial for the PAB to carry out its regulatory functions.

**Staff Recommendation:** ***The PAB should advise the Committees on whether or not it believes a non-voting physician and surgeon member of the PAB is beneficial to the work of the PAB and the profession of PAs or if that position should be eliminated.***

PAB Response: The relationship between the physician and the PA is unique in medicine in that PAs derive the authority to practice medicine from a written agreement with a physician. Because PAs are unable to practice medicine without physician collaboration, is it is appropriate to have physician input on matters under consideration by the PAB. The non-voting nature of the position gives due respect to the independent nature of the PAB while recognizing the close collaboration between PAs and physicians to provide excellent care to California consumers. Further, under current law, regulations relating to scope of practice of PAs require approval by the medical board, so it is helpful to have physician input into the drafting of regulatory language. The PAB would like to retain the ex-officio member from the medical board and appreciates its close working relationship with the MBC.

**ISSUE #2: (VACANCIES). Vacancies affect the ability of any regulatory body to effectively conduct its work and carry out its responsibilities. Are PAB vacancies affecting the Board's operations?**

**Background:** Per BPC § 3505, the PAB is required to have nine voting members. Seven members are appointed by the Governor (two public members and five professional members), and the Senate Rules Committee and Speaker of the Assembly each appoint a public member. Per BPC § 3511, five members of the PAB are necessary in order to achieve a quorum. As noted above, the PAB currently has three vacant positions. The PAB plays a vital role in the regulation and administration of the PA Practice Act. The PAB is responsible for making decisions in licensing, disciplinary matters, contracts, budget issues, executive staffing and consumer outreach. Further, many of these decisions are made at PAB meetings, which are public forums. If there are not a sufficient number of PAB members to participate at a PAB meeting, the transaction of business cannot commence. While the PAB notes in its 2019 Sunset Review Report, that it has not had to cancel any meetings due to a lack of quorum, the current 3 vacancies could become problematic for future administrative operations to carry out the PAB's duties, which could impact probationers seeking probation modifications or other enforcement-related actions; providing legislative feedback; or, delaying the development, approval or disapproval of regulatory changes, among others.

**Staff Recommendation:** ***The PAB should advise the Committees on any concerns it has with the current vacancies on the PAB and what, if any, conversations it has had with the***

***Administration to encourage vacancies be filled in a timely manner. The PAB should advise the Committees if it projects any quorum issues resulting from the current vacancies.***

PAB Response: Fortunately, the current PAB members are exceptionally devoted to their duties and the PAB has not had any quorum issues. We are grateful for several recent appointments and re-appointments from the Governor's office. Having a full board allows for varied viewpoints and diverse opinions, which allows us to make well-vetted decisions to protect California consumers. While it would be helpful in these uncertain times to have a full board, the PAB does not anticipate any quorum issues with its current membership.

## ISSUE #3: (SB 697) Does the PAB forecast any regulatory challenges associated with the implementation of SB 697?

**Background:** SB 697 (Caballero, Chapter 707, Statutes of 2019), made significant revisions to the PA Practice Act. The bill completely revised the way in which PAs and physician and surgeons arrange and handle supervision. Among numerous other provisions, the bill allowed multiple physicians and surgeons to supervise a PA and redefined the supervision agreement. What was once referred to as a *delegation of services agreement*, is now referred to as a *practice agreement.* Further, the bill eliminated the statutory requirement for a medical records review by a physician and surgeon, which aimed to provide increased flexibility for supervising physician and surgeons in determining the appropriate level of supervision for a PA's practice.

Effective, January 1, 2020, a physician and surgeon who supervises a PA does not need to be physically present when a PA is treating a patient, but must have the specifications of the supervision agreed to in the practice agreement and the physician and surgeon must be available by telephone or other electronic communication methods at the time the PA is examining a patient.

The new practice agreement is written between a supervising physician and surgeon and a PA (which could be one or more supervisors/supervisees. The agreement defines the medical services that a PA is authorized to perform along with policies and procedures to ensure adequate supervision, methods for evaluating competency, the specific authorizations for furnishing or ordering drugs or devices and any other provisions agreed to by the supervising physician and surgeon and the PA. The bill did not alter or expand a PA's scope of practice and as a result, the medical services performed by a PA are only authorized within the PA scope of practice as specified in the PA practice Act.

The provisions of SB 697 went into effect on January 1 of this year. As a result, it would be helpful to know how the PAB prepared for the transition. In addition, if it has received an increased number or complaints regarding PAs, or if there have been any challenges to the Board's operations with the newly implemented law. It would also be helpful to understand whether PAB needs to update regulations or its model disciplinary guidelines because of the new law.

**Staff Recommendation:** ***The PAB should advise the Committees on whether or not there have been any implementation challenges because of changes to the PA practice act through the passage of SB 697 (Caballero, Chapter 707, Statutes of 2019). Also, the PAB should inform the Committees on its methods to inform both licensees and consumers about changes to the laws for PAs.***

PAB Response: Effective January 1, 2020, sections 3502.1(e)(1) and (e)(3) of the Business and Professions Code were amended to read in part, "as those provisions read on June 7, 2019." This date freezes the PAB's ability to write, amend, or enact any new regulations related to its controlled substances education course standards or pharmacology course standards at sections 1399.530, 1399.610, and 1399.612 of Title 16 of the California Code of Regulations that were not in effect as of that date. The PAB requests that this date be removed from Business and Professions Code section 3502.1 to restore the PAB's discretion to set standards in this area. In an effort to inform both licensees and consumers about the changes to the PA practice act through the passage of SB 697, the PAB released its Information Bulletin for SB 697 – Frequently Asked Questions. The implementation of SB 697 and the link to the Information Bulletin is displayed in the Alerts section of the PAB's website. In addition, the information was sent to all PAB email subscribers through its listserv.

The PAB continues to work on implementing regulations for SB 697. At its August 7, 2020, meeting the PAB voted on a suite of implementing regulations. Unfortunately due to technical difficulties in timely posting the meeting materials for a recent meeting, members of the public were unable to provide meaningful public comment prior to or during the meeting. Now that this issue has been brought to the PAB's attention, the PAB plans to re-visit the implementing regulations at its next meeting, currently scheduled for February 8, 2021.

**ISSUE #4: (AUTONOMY FROM MBC) How is the PAB preparing to transition from a shared-services agreement with the MBC? Does the PAB project any increased costs when it moves to conduct certain activities on its own?**

**Background:** SB 1236 (Price, Chapter 332, Statutes of 2012) formally recognized the transition of the former PA Committee to its current status as board within the DCA. At the time of its transition to a board, the decision was made to establish a shared-services agreement with the MBC which resulted in the MBC's continuation of services that had been provided by the MBC when the PAB was operating as a committee under its jurisdiction including: enforcement, information technology, and fund management.

**Although the PAB recently eliminated its shared services agreement,** the MBC **continues to have** a shared-services agreement with, the Podiatric Medical Board, and smaller programs that do not have near the infrastructure and administrative support that a large board like MBC does, in order to assist these boards in efficiently conducting their business. At one time, many of today's independently operating boards were committees or others entities under the jurisdiction of the MBC.

As part of the PAB's 2019-2023 strategic plan, the PAB **sought** to: *Research the feasibility of the [PAB] becoming completely independent of the [MBC] to increase efficiencies and enhance consumer protection.* The PAB notes that because of moving all of its regulatory functions under the PAB's purview, it would increase efficiencies and enhance consumer protection.

The PAB noted in its 2019 Sunset Review Report, that there were serious deficiencies with meeting its formal discipline goals **because the enforcement program was not handled solely by the PAB**. The PAB's overall target to complete the enforcement process for cases resulting in formal discipline is 540 days, or 18 months. Currently, the average time to complete formal discipline in taking approximately 978 days. While many entities play a role in formal discipline, including the MBC, the Attorney General's office and the Office of Administrative hearings, the longevity of formal discipline cases is not in the best interest of consumer protection.

It is unclear if the PAB's transition from relying on MBC services will alleviate this lengthy delay, or if the delay is because of the MBC's role in the PAB's enforcement case. The PAB stated in its 2019 Sunset Review Report, "it is imperative that the Board's Enforcement Program workload be completed in-house, and not through a shared service agreement with MBC to maintain a total span of control and accountability over all of its enforcement processes and adequately and effectively carry out its enforcement mandates by utilizing best enforcement practices."

The PAB requested, and approved, for additional staffing positions through a Budget Change Proposal, specifically $535,000 in 2020-21 and $461,000 ongoing for 4.0 positions, 3.0 of which to address enforcement functions that are currently being performed by the MBC. However, for FY 2018/18, the PAB paid approximately $85,000 for MBC's shared services agreement. It would be helpful for the Committees to better understand how this transition was achieved and what, if any efficiencies have been gained. It would be helpful for the Committees to understand what actual delays in enforcement stemmed from the shared services agreement, as opposed to delays in the process based on investigator timeframes and the length of time the Attorney General's office takes, and how PAB having their own complaints staff will contribute to better outcomes and swifter action against PABs posing a threat to patient safety.

**Staff Recommendation:** ***The PAB should advise the Committees on what it perceives to be the benefits to eliminating its shared-services agreement with the MBC. In addition, the PAB should inform the Committees about the steps it has taken or is preparing to take to aid in this transition. How does the PAB believe the transition will improve bottlenecks in current enforcement timeframes?***

PAB Response: The PAB continues to functions as an autonomous, decision-making body with its own set of laws and regulations. Currently the PAB maintains the oversight and processing of all its licensing and probation monitoring functions. By eliminating its shared-services agreement with the MBC, the PAB will assume its enforcement functions-complaint processing and discipline workload in-house, which will allow the PAB to have total span of control and accountability over all of its enforcement processes. With the approval of the additional staff through the Budget Change Proposal, PAB now has its own dedicated enforcement staff to process complaints instead of utilizing MBC staff. MBC not only processes its own enforcement matters but also responsible for other Allied Health professionals. It is critical that the PAB has its own enforcement staff solely dedicated to adequately and effectively carry out its enforcement mandates by utilizing best enforcement practices. The PAB feels it can better prioritize its own workload and ultimately provide a higher quality of complaint and discipline processes while utilizing program specific institutional knowledge. PAB plans to continue to work with the MBC to transition the enforcement workload.

## ISSUE #5: (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.

**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 profession unless an exemption is enacted.***

PAB Response: AB 5 and the *Dynamex* decision address the employer-employee relationship. This is not within the PAB's jurisdiction. Therefore, the PAB has not had discussions about this topic. The PAB is not aware of how AB and the *Dynamex* decision may or may not impact the current landscape of the profession.

## ***BUDGET ISSUES***

**ISSUE #6: (RESERVE BALANCE) How does the PAB manage to maintain a healthy reserve when so many other boards are near deficits? Are the PAB's fiscal numbers accurate? What is the status of the unpaid general fund loan? How will the PAB's transition out of the MBC impact its fiscal health?**

**Background:** Multiple boards within the DCA are facing budget and funding shortfalls, however, the PAB projects a healthy reserve. Those figures most likely do not include a GF loan repayment of $1.5 million stemming from a 2011 loan that PAB expects to receive repayment for. The PAB noted that it does not project a deficit, or have a plan to increase fees in the future due to the PAB's large fund balance.

| Table 2. Fund Condition | | | | | | |
|---|---|---|---|---|---|---|
| (Dollars in Thousands) | FY 2015/16 | FY 2016/17 | FY 2017/18 | FY 2018/19 | FY 2019/20 | FY 2020/21 |
| Beginning Balance | $1,739 | $1,762 | $1,870 | $2,391 | $3,009 | $4,881 |
| Revenues and Transfers | $1,688 | $1,821 | $1,894 | $2,131 | $2,330 | $2,412 |
| **Total Revenue** | $3,407 | $3,583 | $3,764 | $4,522 | $5,339 | $7,293 |
| Budget Authority | $1,765 | $1,857 | $1,904 | $1,821 | $2,301 | $2,911 |
| Expenditures | $1,651 | $1,638 | $1,854 | $1,335 | $1,835 | $2,911 |
| State Operations | $3 | $75 | $93 | $119 | $123 | $114 |
| Accrued Interest, Loans to General Fund | $0 | $0 | $0 | $0 | $0 | $0 |
| Loans Repaid From General Fund | $0 | $0 | $0 | $0 | $1,500 | $0 |
| **Fund Balance** | $1,753 | $1,870 | $1,817 | $3,068 | $4,881 | $4,268 |
| **Months in Reserve** | 12.3 | 11.5 | 15.0 | 18.8 | 19.4 | 16.7 |

While the Board's fiscal outlook is rather bright, it is unclear how the PAB's fiscal situation changes as the PAB moves all of its services in-house and eliminates its shared services agreement with the MBC. It would be helpful for the Committees to understand the impacts, including expected changes to pro rata expenses paid to the DCA.

**Staff Recommendation:** ***The PAB should advise the Committees on its current fiscal outlook and what, if any, fiscal challenges it anticipates because of eliminating the shared-services agreement.***

PAB Response: PAB has always been fiscally responsible watching its spending and carefully assessing its needs versus its wants. Over the past five years, the program has been reverting between 3-5% of its authorized expenditure. Due to the continuing of the increasing PA graduates from the newly established schools, the PAB anticipates increasing revenue. With the trend of increased revenue of 5-10% annually, the PAB does not anticipate a drastic impact on its fiscal health. The PAB has not had a fee increase and this would be a viable option should the need arise.

## ISSUE #7: (COST RECOVERY). Are eligible enforcement costs being recovered?

**Background:** Per BPC § 125.3, the PAB is authorized to collect the full cost recovery of its investigation and enforcement costs for its cases that result in formal discipline. Reimbursement of costs associated with an enforcement case is a standard term of probation as noted in the PAB's disciplinary guidelines. Below is a table provided by the PAB exhibiting the amount of money collected in cost recovery relative to the amount of cost recovery that is ordered by the PAB, as part of formal discipline. The PAB receives less than 50% of the cost recovery ordered. Given that the PAB has expressed an increase in enforcement workload due to the rising numbers of complaints, it would be beneficial to understand if the PAB can enhance its cost recovery efforts.

| **Table 11. Cost Recovery** (dollars in thousands) | | | | |
|---|---|---|---|---|
| | FY 2015/16 | FY 2016/17 | FY 2017/18 | FY 2018/19 |
| Total Enforcement Expenditures | $1,020 | $999 | $906 | $925 |
| Potential Cases for Recovery * | 8 | 15 | 20 | 8 |
| Cases Recovery Ordered | 9 | 20 | 23 | 10 |
| Amount of Cost Recovery Ordered | $43,902.00 | $149,699.25 | $229,400.00 | $172,492.25 |
| Amount Collected | $34,276.0 | $50,576.50 | $41,172.87 | $83,802.44 |
| * "Potential Cases for Recovery" are those cases in which disciplinary action has been taken based on violation of the license practice act. | | | | |

Note: *Information taken from the PAB's 2019 Sunset Review Report*

**Staff Recommendation:** ***The PAB should advise the Committees about its efforts to collect ordered cost recovery. Further, the PAB should explain to the Committees about whether or not the amount ordered is sufficient to cover the cost of an enforcement case.***

PAB Response: The PAB seeks cost recovery through stipulated settlements as well as proposed decisions as ordered by an Administrative Law Judge (ALJ) through a hearing. When an ALJ orders cost recovery in a revocation case, it is usually difficult to collect cost recovery as the revocation of license takes away the PA's means of income and therefore the PA may have little or no financial resource. Furthermore, in stipulations for surrender of a license and revocation of license, costs are not required to be paid until the licensee applies for a petition for reinstatement of license. The PAB feels that their mission of public protection is met when the ultimate result is revocation or a surrendered license in the most egregious cases; and that the cost incurred in these cases are well spent in protection of the consumers. In cases of disciplinary action where a licensee is placed on probation, the probationer is ordered to reimburse the PAB the full cost recovery amount within 90 days from the effective date of his or her decision. The PAB will consider the licensee's financial hardship and accept payment by an installment plan. Based on the table above, the number of "Potential Cases for Recovery" includes probation, revocation and/or surrender. Typically, most costs awarded to the PAB in probation cases are paid in installments, so money awarded as costs in one year may not be fully collected until the end of the probation period, perhaps in three to five years. In probation cases where cost recovery is not paid, the licensee is considered to be in violation of the terms of probation, and the PAB may seek additional disciplinary action based on violation of probation. In addition, probationers must pay cost recovery in full prior to the successful completion of their probation term.

## ***LICENSING ISSUES***

### ISSUE #8: (ACCESS TO CARE) Are there enough PAs in California to meet the need for access to primary care?

**Background:** According to the PAB, *a PA is a licensed and highly skilled health care professional who is academically and clinically prepared to provide health care services with the direction and responsible supervision of a doctor of medicine or osteopathy. Within the physician-PA relationship, PAs make clinical decisions and provide a broad range of diagnostic, therapeutic, preventive, and health maintenance services. A PA must attend and graduate from an accredited physician assistant program associated with a medical school that includes*

*classroom studies and clinical experience. The professional curriculum for PA education includes basic medical, behavioral, and social sciences; introduction to clinical medicine and patient assessment; supervised clinical practice; and health policy and professional practice issues*.

PAs predominantly practice in primary care service settings such as private practice physician offices and hospitals; however, PAs also provide services in community health clinics and rural health clinics. As reported by the Bureau of Labor Statistics, nationally, the majority of PAs work in physicians' offices (55%) and in hospital settings (26%).

There is a vast amount of research that acknowledges a PA's role as part of a healthcare team for providing basic, but critical healthcare services across the state and country. With the rising need for an educated and prepared PA workforce in California, it is arguably imperative that the PAB have a robust licensing and enforcement process and that its licensing system is able to keep up with demand for the workforce, which includes streamlined access to training and education opportunities in California. The PAB noted in its 2019 Sunset Review Report that the issue of PA education and workforce development is "ongoing" from the PAB's perspective, however, it is unclear what that means.

Nationally, the Bureau of Labor Statistics has reported that the employment of PAs is projected to increase by 31% from 2018 to 2028, which is much faster than the average for all other occupations. The BLS further notes that "as demand for healthcare services grows, [PAs] will be needed to provide care to patients."

California is home to approximately 13,000 PAs, which is one of the highest licensing populations of PAs across the country; however, as noted in a September 2018 report from the Healthforce Center at UCSF, California is one of a few states with a low rate of PAs per capita. The American Academy of Physician Assistants reports that across the country there are approximately, 131,000 PAs. Even with those numbers, there are still reports of potential primary care workforce shortages especially in rural communities.

According to an August 2017, research report released by the University of California San Francisco Healthforce Center, California will likely face a shortfall of primary care clinicians (which includes PAs, nurse practitioners, and physicians) in the next 15 years. The report noted, "Mid-range forecasts indicate that California will have shortages of primary care clinicians in 2025 and 2030, and would need approximately 4,700 additional primary care clinicians in 2025 and approximately 4,100 additional primary care clinicians in 2030 to meet demand."

Although the Bureau of Labor statistics notes an increase in PA growth nationally, the workforce trends continue to see potential shortages on the horizon in California for primary care clinicians, which include both PAs and NP in addition to the MD professions, especially as it relates to regional disparities. In the past, the PAB has listed the number of PAs practicing in each county in California on its internet website. However, it does not appear that the data has been updated on the PAB's website since 2010. Regional workforce data may be helpful when assessing workforce trends and determining areas where critical shortages may be present in California.

Further noted in a September 2018 report from the California Health Care Foundation, while California is home to [now 16] nationally approved schools providing the required education; however, those school are found to be situated predominately in the Greater Bay Area and the Los Angeles Area. If PA educational programs are not regionally accessible, it could pose a

challenge in efforts to train for a profession that is necessary to assist in providing critical primary care services.

**Staff Recommendation:** ***The PAB should inform the Committees about its efforts to monitor PA workforce issues in California. Should the PAB attempt to capture data about PA practice and services areas to help inform if, and where, potential workforce needs may be greatest? Is there anything the PAB can do to help ensure educational opportunities are accessible?***

PAB Response: The education and workforce committee of the PAB closely monitors PA program growth in CA, which has doubled in the last six years. Currently about 880 PAs graduate from CA PA programs and the PAB licenses about the same number from out of state programs each year. Within the next 5 years, if the currently developing programs progress as anticipated, about 1160 PAs will graduate from CA PA programs annually. The major limiting factor for PA Program growth is the availability of clinical training sites, which have been severely impacted by the COVID pandemic. Any legislation that would make it easier for clinical preceptors to take PA students would aid in the growth of the PA workforce in CA. Although most of the PA programs in CA are located in the LA or SF Bay Area, these programs send students all over CA for clinical rotations, so the geographic maldistribution of the programs is not a significant factor preventing PA workforce supply in CA. The PAB tracks education and workforce issues to ensure that its processes are not a hindrance to supply, and to staff appropriately for the growing number of PAs in CA. Tracking the location, workplace setting, practice type and other data in order to project and meet workforce needs for consumers is beyond the scope of the PAB's public protection mission and is addressed by other agencies such as OSHPD. The PAB works closely with stakeholders to ensure that its policies and procedures are consistent with PA workforce efficiencies and growth to enhance CA consumer access to quality healthcare.

## ISSUE #9: (AB 2138). What is the status of the Board'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 based on 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. Currently, the PAB is in the process of finalizing its regulations to revise its denial criteria to incorporate the changes from the bill. It is also likely that the PAB 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**: ***PAB should provide an update in regards to its implementation of the Fair Chance Licensing Act, as well as relay any recommendations it has for statutory changes.***

PAB Response: Effective July 1, 2020, PAB staff was instructed to follow the statutes amended by AB 2138 when processing applications, suspensions, or revocations of an applicant or licensee with a criminal conviction. To implement AB 2138, the PAB prepared a rulemaking that amends title 16 California Code of Regulations (CCR) sections 1399.525 (Substantial Relationship Criteria) 1399.526 (Rehabilitation Criteria for Denials and Reinstatements), 1399.527 (Rehabilitation Criteria for Denials and Reinstatements), and 1399.523.5 (Required Actions Against Registered Sex Offenders). This rulemaking was submitted to DCA Legal on February 21, 2019 and resubmitted with revisions on March 29, 2019.

While undergoing review at DCA Legal, the rulemaking was divided into two parts, the first part amending 16 CCR 1399.525 (Substantial Relationship Criteria) 1399.526 (Rehabilitation Criteria for Denials and Reinstatements), and 1399.527 (Rehabilitation Criteria for Denials and Reinstatements). This rulemaking was published on January 13, 2020. During the 45-day comment period the PAB received one public comment letter praising the PAB's rulemaking and requesting amendments that were duplicative of statute, which the PAB rejected. On August 17, 2020, the final rulemaking was submitted to OAL. OAL requested modifications to the regulation text to standardize the language across all the AB 2138 DCA program rulemakings. The requested modifications to the text went out for 15-day public comment from October 21 to November 5. No public comments were received. The PAB approved the OAL-requested modifications to the text on November 9, and the completed rulemaking is at OAL awaiting the DOF's signature on the STD.399. Once that signature is obtained, the rulemaking record will be complete and submitted to OAL. Upon OAL's final approval, the rulemaking will become effective upon filing with the Secretary of State.

The second half of the PAB's initial rulemaking implements AB 2138 by amending 16 CCR 1399.523.5 (Required Actions Against Registered Sex Offenders). The initial public notice documents for that rulemaking were submitted to the Business, Consumer Services and Housing Agency (Agency) for review on October 8, 2020. As soon as Agency approves the initial public notice documents, the rulemaking will be published for a 45-day public comment period.

## ISSUE #10: (CE AUDITS) Can the PAB improve upon its efforts to ensure that licensees actually complete required continuing education?

**Background**: BPC § 3524.5 authorizes the PAB to require a licensee to complete continuing medical education (CE or CME) as a condition of licensure renewal. CCR 16 § 1399.615 specifies that a physician assistant who renews his or her license on or after January 1, 2011, is required to complete 50 hours of approved CME during each two year renewal period, unless they are certified by the National Commission on Certification of Physician Assistants. If they have met that certification, they are deemed to have met the CE requirements. The Board only started conducting audits of its licensing population in 2016 to determine compliance with CE completion. CE has been viewed as an important tool in the healthcare workforce arena as it helps practitioners continue to learn and evolve with the fast-paced and continuously changing medical field, however, if healthcare practitioners are simply self-certifying CE completion and

no formal compliance occurs, it is difficult to justify the requirement as a condition of license renewal.

The PAB noted in its 2019 Sunset Review Report, that it has only conducted audits of 1,675 licensees. Of those audited, 19% failed the audit (approximately 1.13% of its licensing population). However, since May 2016, when the Board started auditing its licensees for compliance, it has only conducted audits on approximately 13% of its total licensing population.

According to the Board, if a PA is found in violation of the CE requirements, they are simply required to make up any deficiencies during the next biennial renewal cycle. If they fail to complete CE at that time, then the licensee is ineligible for renewal, placed in inactive status, and is not authorized to practice until such time the deficient hours are completed. It would be helpful to understand the implications for this, including projected workload and cost for the PAB to actually verify CE, as well as what methods may be available for streamlined verification like receiving evidence of completion directly from CE providers.

**Staff Recommendation:** ***The PAB should advise the Committees on its CE program and audits to determine compliance.***

PAB Response: To clarify a point above, of the 1,675 licensees audited, only 19 licensees failed the audit, not 19% licensees. This equates to approximately 1.13% of audited licensees. The PAB is authorized by 16 CCR section 1399.617 to audit a random sample of physician assistants who have reported compliance with CME. In the PAB's 2012 Sunset Review response to issues raised by legislative staff in the background paper, it was reported that the PAB planned to conduct CME audits on a scheduled basis to ensure compliance. The PAB has since randomly selected 5% licensees who self-certify under penalty of perjury that they have met the PAB's CME requirements. The CME requirement may met by completing 50 hours of Category 1 (preapproved) medical education or maintaining certification by the National Commission on Certification of Physician Assistants (NCCPA) at the time of renewal.

## *ENFORCEMENT ISSUES*

**ISSUE #11: (MANDATORY REPORTING). PAB receives reports related to PAs from a variety of sources. These reports are critical tools that ensure PAB maintains awareness about its licensees and provide important information about licensee activity that may warrant further investigation. Is PAB receiving necessary information?**

**Background:** There are a number of mandatory reporting requirements designed to notify the PAB about possible violations. These reports provide the PAB with information that may warrant further investigation of a PA.

***B&P Code section 801.01*** requires the reporting of settlements over $30,000 or arbitration awards or civil judgements of any amounts. 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.

***B&P Code section 802.1*** requires a physician assistant to report criminal charges as follows: the bringing of an indictment charging a felony and/or any conviction of any felony or misdemeanor, including a verdict of guilty or plea of no contest. These incidents appear to be reported as required. In addition, the Board receives reports of arrest and convictions independently reported

to the Board by the DOJ through subsequent arrest notifications. The Board issues citations to licensees who fail to report their criminal conviction as required by this statute.

***B&P Code 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 physician assistant's gross negligence or incompetence, to submit a report to the Board. The coroner must provide relevant information, including the name of the decedent and attending physician as well as the final report and autopsy.

***B&P Code sections 803, 803.5 and 803.6*** requires the clerk of a court to transmit a judgment that a licensee has committed a crime, or is liable for any death or personal injury resulting in a judgement of any amount caused by the licensee's negligence, error or omission in practice, or his or her rendering of unauthorized professional services, to the Board within 10 days after the judgment is entered. In addition, the court clerk is responsible for reporting criminal convictions to the Board and transmitting any felony preliminary hearing transcripts concerning a licensee to the Board.

***B&P Code 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 licensee's application for staff privileges or membership is denied or the licensee'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 licensee'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 the peer review body. To determine if the reports are received pursuant to Section 805, the Board compares information with the National Practitioners Databank (NPDB)

***B&P Code section 805.01*** requires the chief of staff or 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 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 substances; or the use of any dangerous drug, as defined in 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 person, 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 PAB reported it has not experienced any problems receiving the required reports within the statutory timeframes; however, there isn't a mechanism in place to verify if the PAB receives every report. During the last FY, the PAB reported that it only received five settlement reports.

**Staff Recommendation**: ***The PAB should advise the Committees on steps it takes to ensure timely compliance with BPC Section 805 reporting requirements.***

PAB Response: The PAB now has a dedicated enforcement staff who tracks and is responsible for ensuring timely compliance with Section 805 reporting requirements. The PAB believes it is receiving those reports where the facility feels a report should be issued. In addition, the PAB compares information with the National Practitioners Databank (NPDB) to ensure it has received the same reports provided to the NPDB.

## ***COVID-19 ISSUES & RESPONSE***

**ISSUE #12: (COVID-19). Since March of 2020, there have been a number of executive issued waivers, which affect licensees and future licensees alike. Do any of these waivers warrant an extension or statutory changes?**

In response to the COVID-19 pandemic, the Governor instituted a number of actions and issued numerous executive orders in order to address the immediate crisis, including impacts on the state's healthcare workforce stemming from the virus. On, March 4, 2020, the Governor issued a State of Emergency declaration, as defined in Government Code § 8558, which immediately authorized the Director of the Emergency Medical Services Authority (EMSA) to allow licensed healthcare professionals from outside of California to practice in California without a California license. Under BPC § 900, licensed professionals are authorized to practice in California during a state of emergency declaration as long as they are licensed and have been deployed by the Director of EMSA.

Following that executive order, on March 30, 2020, the Governor issued Executive Order N-39-20 authorizing the Director of DCA to waive any statutory or regulatory professional licensing relating to healing arts during the duration of the COVID-19 pandemic – including rules relating to examination, education, experience, and training. Three examples of waivers affecting the PAB and its licensing population include.

DCA-20-69 waives for individuals whose active licenses expire between March 31, 2020, and December 31, 2020, any statutory or regulatory requirement that individuals renewing a license take and pass an examination in order to renew a license; and, any statutory or regulatory requirement that an individual renewing a license complete continuing education requirements in order to renew a license. These do not apply to any continuing education, training, or examination required pursuant to a disciplinary order against a license.

DCA-20-67 waives BPC § 3516, subdivision (b), which prohibits a physician and surgeon from supervising more than four physician assistants at any one time, and waives statutory and regulatory requirements that a practice agreement or written delegation of services agreement exist for a physician assistant to perform medical services, as specified.

DCA-20-57 waives any statutory or regulatory requirement that an individual seeking to reactivate or restore a license meet CE requirements in order to reactivate or restore a retired, inactive, or canceled license; and pay any fees in order to reactivate or restore a retired, inactive, or canceled license (including renewal, delinquency, penalty, or late fees, or any other statutory or regulatory fees). This is only applicable to an individual's license that is in a retired, inactive, or canceled status for no longer than five years.

Many of the above-mentioned waivers are extended, while some are set to expire in December 2020. The question remains as to whether or not any of these waivers are still relevant during the pandemic or necessary. Should any waivers be a permanent change?

**Staff Recommendation**: ***The Board should advise the Committees on its COVID-19 waiver requests and whether or not any of the waivers be permanent or for a set time, or if any waivers are no longer necessary.***

PAB Response: On November 13, 2020, PAB provided the Committees with responses to supplemental questions related to COVID-19. The PAB worked on waiver requests in connection with Executive Order N-39-20. The PAB believes that waivers that are currently in place are necessary but does not see a need for any of these waivers to be permanent.

## *TECHNICAL CHANGES*

**ISSUE #13: (TECHNICAL CHANGES MAY IMPROVE EFFECTIVENESS OF THE PA PRACTICE ACT AND PAB OPERATIONS.) There are amendments that are technical in nature but may improve PAB operations.**

**Background:** There are instances in the PA Practice Act where technical clarifications may improve PAB operations and application of the statutes governing the PAB's work.

Since the PAB's last review in 2015, the PAB has sponsored or been impacted by approximately 13 legislative actions which impact many of the PAB's duties, oversight authority, enforcement and licensee operations. As a result, there may be a number of non-substantive and technical changes to the practice act that should be made to correct deficiencies or other inconsistencies in the law.

Because of numerous statutory changes and implementation delays, code sections can become confusing, contain provisions that are no longer applicable, make references to outdated report requirements, and cross-reference code sections that are no longer relevant. The PAB's sunset review is an appropriate time to review, recommend and make necessary statutory changes.

For example, the current licensure examination for PAs is administered by a national organization, not the PAB. However, BPC § 3517 requires the PAB to establish a passing score for the examination, and set the time and place of the examination. Given that the PAB no longer administers a licensing examination, these provisions are outdated and should be removed.

BPC § 3505 specifies the Board-membership for the PAB; however, it appears that some of the statutory requirements specified in this code section are out-of-date and may need statutory clean-up. Specifically, BPC § 3505 states that: the members of the board shall include four physician assistants, one physician and surgeon who is also a member of the Medical Board of California, and four public members. *Upon the expiration of the term of the member who is a member of the Medical Board of California, that position shall be filled by a physician assistant.* This transition has already occurred and the PAB currently has five physician assistants, four public members and one non-voting member. Code clean-up may be necessary to correctly reference the current Board membership.

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

PAB Response: The PAB supports this recommendation and is happy to work with committee staff to enact any technical changes to the Business and Professions Code needed to add clarity and remove unnecessary language.

## ***CONTINUED REGULATION OF THE PROFESSION BY THE CURRENT PROFESSION BY THE PHYSICIAN ASSISTANT BOARD***

**ISSUE #14: (CONTINUED REGULATION BY THE PAB.) Should the licensing and regulation of PAs be continued and be regulated by the current PAB?**

**Background:** The PAB needs to continue with its efforts to reduce enforcement backlogs, collect cost recovery fees, ensure a robust enforcement program, and continue to focus on those issues that affect the PAB and its licensees.

**Staff Recommendation:** ***The PAB's current regulation of PA's should be continued, to be reviewed again on a future date to be determined.***

PAB Response: The PAB supports this recommendation and greatly appreciates the opportunity of the sunset review process. The PAB members and staff look forward to working with the Committees' and their staff on issues that have been identified in order to protect the interest of the public.