



**LEGISLATIVE COMMITTEE
MAY 20, 2015**

SUBJECT: LEGISLATIVE PROGRAM REPORT

5

ACTION: RECEIVE AND FILE

RECOMMENDATION

Receive the status update report regarding Legislative Matters

ISSUE

This report summarizes recent legislative activities that may impact health boards including the Board of Podiatric Medicine ("BPM"). This report provides the Legislative Committee with information regarding legislative and regulatory matters as well as updates on related activities of the BPM.

A. SUNSET REVIEW

1. SUMMARY

This matter is fully outlined in the Executive Management Committee's report. In summary, the BPM has received a letter of invitation dated 4-30-15, to participate in the Sunset Review process. (See Executive Management Committee, 5-20-15 - Sunset Review Agenda Item). This gives BPM an opportunity to respond to issues, problem areas, or otherwise submit to the legislature its progress on specific issues brought forth in the last Sunset Review on 3-12-11. BPM will be given an opportunity to detail many of its accomplishments and answer questions publically to ensure that it is effective and efficient in protecting the public and responsibly licensing and disciplining doctors of podiatric medicine. If BPM fails to prove its competency, the Podiatric Medicine Act is scheduled for automatic repeal on January 1, 2017.

This process gives BPM an opportunity to prepare a Background Paper to be used at the Sunset Review Hearing which is expected to take place between March and May of 2016. BPM Board President and Executive Officer (EO) will attend the hearing to answer questions, etc... Other Board Members are free to attend the hearing and help to justify its actions and assist the legislature in determining

whether BPM has satisfactorily demonstrated a public need for its continued existence.

2. NEXT STEPS

The issues facing BPM during its last Sunset Review and those currently facing BPM are detailed in the Executive Management Committee report which will be brought as an agenda item at the June Board Meeting

B. LEGISLATIVE DAY

The Members of the BPM Legislative Committee will be invited to participate in visits to legislators at the Capitol on June 5, 2015, as follows:

3:00 pm
April Bird
Office of Senator Bob Wieckowski State Capitol, Room 3086
Phone: 916-651-4010
april.bird@sen.ca.gov

3:30 pm
Naima Ford|Legislative Assistant
Office of Majority Floor Leader Chris R. Holden|District 41
State Capitol, Room 319
P: (916) 319-2041 F: (916) 319-2141

(Additional afternoon appointments are expected to be confirmed shortly.)

C. PROGRAM ACTIVITIES AND LEGISLATION MATRIX

DISCUSSION

1. ADMINISTRATIVE SUMMARY

On February 18, 2015 the Legislative Committee met for the first time in many years. Kristina Dixon, President of the Board of Podiatric Medicine of the Legislative Committee, and Dr. Michael A. Zapf, as well as staff members Jason Campbell, Executive Officer, and Kathleen Cooper, Administrative Analyst, were in attendance. The results of this meeting were then reported at the March 6, 2015 Board Meeting. The Board accepted the Committee's recommendations to accept the updated Strategic Plan and Action Plan.

2. 2015 LEGISLATION HEALTH BOARD IMPACT UPDATE

In order to assist the Legislative Committee with a broad understanding of legislation and regulatory matters that impact BPM, summaries of legislation proposed in 2015 are included for committee review that may need to be addressed by the Board in order to adopt general policy guidance.

This is the time of year where there is tremendous flurry of proposed legislation and DCA has held two roundtable discussions on 4-2-15 and 5-1-15 and Jason Campbell and Kathleen Cooper were in attendance. The following summaries are based on information communicated to BPM from legislative staff at DCA and other boards. The specific dates reported below are listed are hopefully accurate and updated information can be found at www.leginfo.ca.gov.

DEPARTMENT-WIDE LEGISLATION

AB 12 (Cooley) State government: administrative regulations: review

Location: Assembly Appropriations Committee

Date of Hearing: This bill was heard in Committee on 4-29-15 (Ayes 9, Noes 0) and referred to Appropriations.

This bill would require every state agency, department, board, bureau or other entity to review and revise regulations to eliminate inconsistent, overlapping, duplicative, and outdated provisions and adopt the revisions as emergency regulations by January 1, 2018. Additionally, this bill would require the Business, Consumer Services, and Housing Agency to submit a report to the Governor and Legislature affirming compliance with these provisions. These provisions would be repealed by January 1, 2019.

Position: BPM staff recommends supporting this bill.

Discussion: BPM has begun the process of reviewing and revising BPM regulations that are inconsistent and outdated. (See reports to the BPM re: Scrivener's Errors for Continuing Education Regulations 1399.671 et al; Oral Argument, Article 13, 1399.1730 et al; and Disciplinary Guidelines, 1399.710 et al.)

AB 85 (Wilk) Open meetings

Location: Assembly Appropriations Committee

Date of Hearing: This bill was heard in Committee on 4-14-15 (Ayes 21, Noes 0) and re-referred to Appropriations

This urgency bill would require two-member advisory committees or panels of a "state body" (as defined in the Bagley-Keene Open Meeting Act) to hold open, public meetings if at least one member of the advisory committee is a member of the larger state body and the advisory committee is supported, in whole or in part, by state funds.

Position: BPM staff recommends supporting this bill.

Discussion: BPM is currently prepared to implement this legislation should it pass the legislature and overcome the Governor's veto. Last year the Governor vetoed legislation mirroring this requirement.

AB 507 (Olsen) Department of Consumer Affairs: BreEZe system: annual report

Location: Assembly Appropriations Committee

Date of Hearing: This bill was heard in Committee on 4-14-15 (Ayes 14, Noes 0) and re-referred to Appropriations

This bill would, on and after January 31, 2016, require the department to submit an annual report to the Legislature and the Department of Finance that includes, among other things, the department's plans for implementing the BreEZe system at specified regulatory entities included in the Department's 3rd phase of the BreEZe implementation project, including, but not limited to, a timeline for the implementation.

Position: BPM staff recommends following DCA's recommendations as to this bill which most recently was reported as neutral.

Discussion: BPM supports all reasonable aspects of open reporting with the BreEZe system.

AB 611 (Dahle) Controlled substances: prescriptions: reporting

Location: Assembly Committee on Business and Professions

Date of Hearing: The author canceled the hearing as this bill has a two year cycle.

This bill would provide that any individual within the Department of Consumer Affairs designated to investigate the holder of a professional license, may request the Department of Justice to release any data that may exist on that individual in the CURES database if there is probable cause to believe that laws governing controlled substances have been violated by the licensee. It would also provide that an individual from a board licensing health care practitioners is not required to submit an application pursuant to this bill in order to access the CURES database. This bill is similar to SB 482 (Lara, 2015).

Position: BPM staff recommends that the Board discuss and watch this bill prior to taking a position.

Discussion: It is important that BPM's enforcement efforts are streamlined and that all relevant information is easily made available; however, there may be delays in providing necessary medications to patients. (See discussion in SB 482 below).

AB 728 (Hadley) State Government: Financial Reporting

Location: Senate Committee on Rules for assignment.

Date of Hearing: Passed third reading and ordered to the Senate on 5-7-15

This bill would require all state agencies to post biennial reviews of internal accounting, administrative control, and monitoring practices on the Department website within five days of finalization. This report is already subject to Public Record Act requests as the report is currently submitted to the Governor, Legislature, State Controller, Treasurer, and others, for inspection by the public.

Position: BPM staff recommends following DCA's recommendations on this bill.

Discussion: BPM encourages efforts to achieve full transparency to all stakeholders in financial reporting.

AB 750 (Low) Business and professions: licenses

Location: Assembly Committee on Appropriations

Date of Hearing: On April 15 (Ayes 14, Noes 0) and it was referred to the Committee on Appropriations.

This bill would allow all programs within the Department to issue a retired license. BPM already issues retired licenses.

Position: BPM staff recommends supporting this bill.

Discussion: A license can be changed to “inactive” for disciplinary or non-compliance reasons, and the “retired” designation is more accurate and has no negative connotation.

AB 1060 (Bonilla) Professions and vocations: licensure

Location: Senate Committee on Rules for assignment.

Date of Hearing: On 4-29-15 (Ayes 17, Noes 0) this bill was ordered to the Consent Calendar.

This bill would authorize a board, upon suspension or revocation of a license, to provide the ex-licensee with certain information pertaining to rehabilitation, reinstatement, or penalty reduction through first-class mail or by electronic means.

Position: BPM staff recommends supporting this bill.

Discussion: Where licenses are revoked or suspended, licensees will be entitled to information about the procedures and criteria for license rehabilitation. It is expected that the related costs will be minor and absorbable within existing resources.

AB 1351 (Eggman) Deferred entry of judgment: pretrial diversion

Location: Committee on Appropriations

This bill changes the existing deferred entry of judgment program for specified offenses into a pretrial diversion program. This bill seeks to limit harsh consequences to immigrants facing deportation. This bill would change the process of prosecution by allowing defendants to enter diversion programs prior to entering a plea.

Date of Hearing: Heard on April 21, 2015 (Ayes 5, Noes 2). Referred to Committee on Appropriations on 5-6-15.

Position: BPM staff recommends that the Board oppose this bill.

Discussion: This bill will likely negatively impact the ability of BPM to efficiently prove in disciplinary proceedings that a licensee or applicant is engaged in illicit drug activities and increase the cost of prosecution.

AB 1352 (Eggman) Deferred entry of judgment: withdrawal of plea

Location: Committee on Rules for assignment

This bill requires a court to allow a defendant to withdraw a guilty or nolo contendere upon the completion of a diversion program where the plea may have serious consequences such as deportation.

Date of Hearing: Heard on 4-21-15 (Ayes 5, Noes 2). Referred to Committee on Appropriations on 5-6-15.

Position: BPM staff recommends that the Board oppose this bill.

Discussion: This bill will likely negatively impact the ability of BPM to efficiently prove in disciplinary proceedings that a licensee or applicant is engaged in illicit drug activities and increase the cost of prosecution.

SB 467 (Hill) Professions and vocations

Location: Senate Committee on Appropriations

Date of Hearing: Hearing was on 4-28-2015 (Ayes 9, Noes 0) and re-referred to Senate Committee on Appropriations on 5-11-15.

This bill would require the Legislature to approve pro rata distributions at the Department. This bill would also require the Attorney General to implement performance measures regarding case referrals. In addition, this bill would direct the Division of Investigation to work cooperatively with healing arts boards regarding standard case referral to the Division. Finally, this bill would extend the sunset for the Board of Accountancy.

Position: BPM staff recommends that the Board discuss and watch this bill prior to taking a position.

Discussion: Although this bill appears to relate to the Board of Accountancy, it is important to all healing arts boards. Policies and procedures impacting case referrals and pro rata distributions are essential to BPM's core functioning.

HEALING ARTS LEGISLATION

AB 159 (Calderon) Investigational drugs, biological products, and devices

Location: Assembly Committee on Appropriations

Date of Hearing: Hearing on 4-27-15 (Ayes 14, noes 0), re-referred to Committee on Appropriations heard on 5-13-15 (Ayes 15, Noes 0)

This bill is referred to as the "Right to Try" and sets up a legal structure whereby individuals with life threatening conditions can gain access to investigational drugs and devices. It would allow a physician to administer drugs that are still undergoing clinical trials and have not yet been approved for general use by the federal Food and Drug Administration. Additionally, this bill would allow manufacturers of such drugs to provide them to the patient, authorize health benefit plans to cover the cost of the drugs, and prohibit state agencies from interfering with the distribution of the drugs or disciplining physicians for recommending them to qualified patients. The bill is similar to SB 149 (Stone, 2015) and SB 715 (Anderson, 2015).

Position: BPM staff recommends that the Board discuss this bill prior to taking a position.

Discussion: The costs are expected to be minor and absorbable; however, there is substantial opposition from health organizations and related entities that cite patient safety and the threat of a decrease in enrollment in clinical trials.

AB 333 (Melendez) Healing arts: continuing education

Location: To Consent Calendar on 5-13-15

Date of Hearing: This bill was heard on 4-29-15 (Ayes 14, Noes 0) and re-referred to Committee on Appropriations on 5-13-15 (Ayes 17, Noes 0).

This bill would allow specified healing arts licensees to apply one unit, as defined, of continuing education credit, for attending a course that results in the licensee becoming a certified instructor of cardiopulmonary resuscitation or the proper use of an automated external defibrillator. It also allows boards to opt out of allowing their licensees to apply this training to their CE requirements.

Position: BPM staff recommends supporting this bill.

Discussion: An increase in the amount of trained CPR and AED professionals will ultimately lead to less hesitation in emergency environments and increase the success rate of cardiac recovery. The bill is supported by the American Red Cross and has no opposition.

SB 396 (Hill) Health and care facilities: outpatient settings and surgical clinics

Location: Senate Committee on Appropriations

Date of Hearing: On 4-21-15 this bill was re-referred to the Committee on Health. On 5-4-15 it was heard (Ayes 9, Noes 0) and re-referred to the Committee on Appropriations.

Summary: This bill would revise various laws related accredited outpatient surgical clinics, including allowing such clinics to apply for licensure to the California Department of Public Health, imposing certain peer review requirements, and requiring certain reporting to the Office of Statewide Health Planning and Development.

Position: BPM staff recommends that the Board support this bill.

Discussion: Although there has not been a thorough fiscal study, this bill is likely to result in an increase in patient safety through additional regulation. The opposition states that it creates potentially burdensome regulation without increasing patient safety.

SB 482 (Lara) Controlled substances: CURES database

Location: Senate Committee on Appropriations

Date of Hearing: This bill was heard on 4-29-15 (Ayes 7, Noes 1), and referred to Committee on Appropriations. It is set for hearing on 5-18-15.

This bill would require prescribers, except veterinarians, and dispensers prescribing or dispensing a Schedule II or III drug to a patient for the first time to consult that patient's record on the CURES database prior to issuing the prescription or dispensing the drug. It would also require the prescriber or dispenser to check the database annually when the prescription remains a part of the patient's treatment. Failure to consult the CURES database as specified would be considered unprofessional conduct and subject the licensee to discipline by the appropriate board. This bill is related to AB 611 (Dahle, 2015).

Position: BPM staff recommends that the Board discuss this bill prior to taking a position.

Discussion: Although prescribers may be required to take additional time prior to dispensing Schedule II or III drugs to a patient, the CURES database is a valuable tool that can prevent drug abuse. It is predicted by supporters that lives will be

saved. There are concerns that the volume of inquiries will overwhelm the current technology and that this will create an overly burdensome requirement that cannot be efficiently and effectively utilized.

AB 623 (Wood) Abuse-deterrent opioid analgesic drug products

Location: Committee on Appropriations

Date of Hearing: On 4-28-15 (Ayes 13, Noes 1) and re-referred to Committee on Appropriations.

This bill attempts to prevent the misuse and abuse of opioids. Innovative technologies that make crushing, cutting, or dissolving conventional opioids difficult. This new approach prevents physical alterations to the pills or inhibits the euphoric effects of opioids when abused.

Position: BPM staff recommends that the Board discuss and watch this bill prior to taking a position.

Discussion: Although on its face the bill appears to help fight drug abuse, the policy issues for consideration brought forth by pharmacists, health plans, etc... cite serious challenges such as mandating to a prescriber they type of medication prescribed and this may not be in the best interests of patients or other stakeholders.

MEDICAL CANNABIS BILLS

The BPM should be vigilant in following the numerous laws that are currently pending regarding medical marijuana. A broad reading of the statute leads one to conclude that doctors of podiatric medicine come within the definition of “physician” as it is used in Sec. 11362.5 of the Health and Safety Code:

, “...physician who has determined that the person’s health would benefit from the use of marijuana in the treatment of cancer, anorexia, AIDS, chronic pain, spasticity, glaucoma, arthritis, migraine, or any other illness for which marijuana provides relief.”

It is the recommendation of staff that the following bills are followed closely and that positions be taken as the proposed legislation continues forward.

AB 26 (Jones-Sawyer) Medical Cannabis Regulation and Control Act

Location: Assembly Business and Professions and Health

Date of Hearing: None scheduled

Provisions affecting the Department in this bill would authorize the Medical Board to discipline a licensee for overprescribing medical marijuana, prescribing without an in-person examination, or recommending marijuana for a nonmedical purpose. This bill has merged with AB 34.

AB 34 (Bonta) Medical Cannabis

Location: Assembly Committee on Appropriations

Date of Hearing: On 4-28-15 (Ayes 9, Noes 4) it was referred to the Committee on Appropriations

This bill would establish the Division of Medical Cannabis Regulation and Enforcement (Division) within the Department of Alcoholic and Beverage Control, and would authorize the Medical Board to discipline a licensee for overprescribing medical marijuana, prescribing without an examination, or recommending marijuana without a medical indication. AB 26 has now merged with this bill.

AB 266 (Cooley and Lackey) Medical marijuana

Location: Assembly Business and Professions

Date of Hearing: On 4-28-15 (Ayes 13, Noes 0) where it was referred to the Committee on Appropriations

This bill would establish the Bureau of Medical Marijuana Regulation (Bureau) within the Department of Consumer Affairs (Department) to license and enforce, in conjunction with local law enforcement, medical marijuana cultivation, manufacture, transportation, storage, distribution, and sale. This bill would also authorize the Medical Board to prioritize cases in which licensees recommend medical marijuana without a medical purpose. This bill is similar to SB 643.

SB 643 (McGuire) Medical marijuana

Location: Senate Committee on Governance and Finance

Date of Hearing: None scheduled

This bill would establish the Bureau of Medical Marijuana Regulation (Bureau) within the Department of Consumer Affairs (Department) to license and enforce, in conjunction with local law enforcement, medical marijuana cultivation, manufacture, transportation, storage, distribution, and sale. This bill would also authorize the Medical Board to prioritize cases in which licensees recommend medical marijuana without a medical purpose. This bill is similar to AB 266.

3. QUARTERLY TIMELINE

Please find attached the BPM Quarterly Timeline

D. PROGRAM CONSENSUS DOCUMENT

The BPM has outlined legislative and regulatory objectives in its current Strategic Plan that indicate that the Executive Officer (“EO”) should help facilitate and enhance awareness of legislation impacting the practice of podiatric medicine. Included in the increased participation at the State Capitol are the publically stated positions relating to pending and amended legislation. As the BPM meets quarterly, and the EO is unable to get BPM approval in a timely fashion between meetings, policies could be adopted by BPM that will allow the EO to use these policies in

circumstances that would actively support the BPM's positions in between quarterly board meetings.

BPM staff reviews relevant bills that are introduced in the legislature. If a bill impacts BPM, staff will either contact the DCA staff or legislative staff from other boards or contact the author of the legislation directly. The EO would be able to enhance BPM's position prior to legislation going forward if BPM gives the EO the authority to take action. Without BPM achieving consensus on policies and giving the EO the ability to further BPM's positions, the EO must wait for the next quarterly Board Meeting. This current situation could be enhanced if BPM could give the EO authority to speak on behalf of BPM when opportunities for input are available.

BPM has stated in its Strategic Plan that it would like to achieve a proactive posture in addressing issues that protect consumers; assess methods to leverage contacts at the State Capitol, so that legislation benefits consumers and BPM stakeholders; pursue elimination of current limitations on education to expunge outdated regulation that limits postgraduate medical education caps; achieve parity licensing between medical doctors and doctors of osteopathy in conjunction with the California Podiatric Medical Association's Physician and Surgeon Taskforce; and, increase stakeholder participation at Board meetings to improve communication between stakeholders and the Board concerning legislative priorities. These are the types of policies that could be specifically outlined in a "Consensus Document" that would outline the issues that BPM wants the EO to actively support or oppose.

BPM could begin the process of listing specific policy areas where there is consensus and direct the EO to take timely positions in furthering BPM's agenda. A "Consensus Document" could be created whereby the EO is given direction and the authority to act on behalf of BPM when it is not in session.

The first step would be for BPM to agree that this is an important step in facilitating their desire to become more involved in the legislative process as stated in the current BPM Strategic Plan. Additionally, Board Members should begin listing positions that are important to BPM and clearly outline the desired position to be taken by BPM. The agreed upon positions could then be listed in a "Consensus Document."

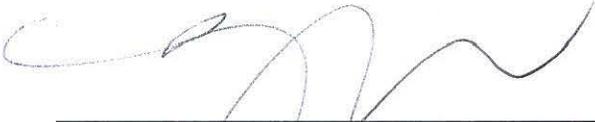
The "Consensus Document" could be an ongoing and adaptable guide for the EO that will allow for BPM staff to implement the stated policies of BPM in a timely and meaningful manner.

ATTACHMENTS

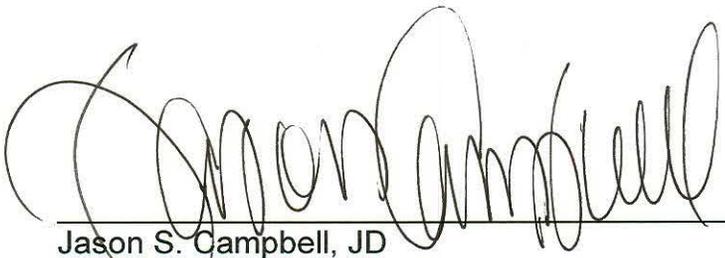
A: BPM – Quarterly Timeline

B. Legislation Matrix

Prepared by: Kathleen Cooper, JD

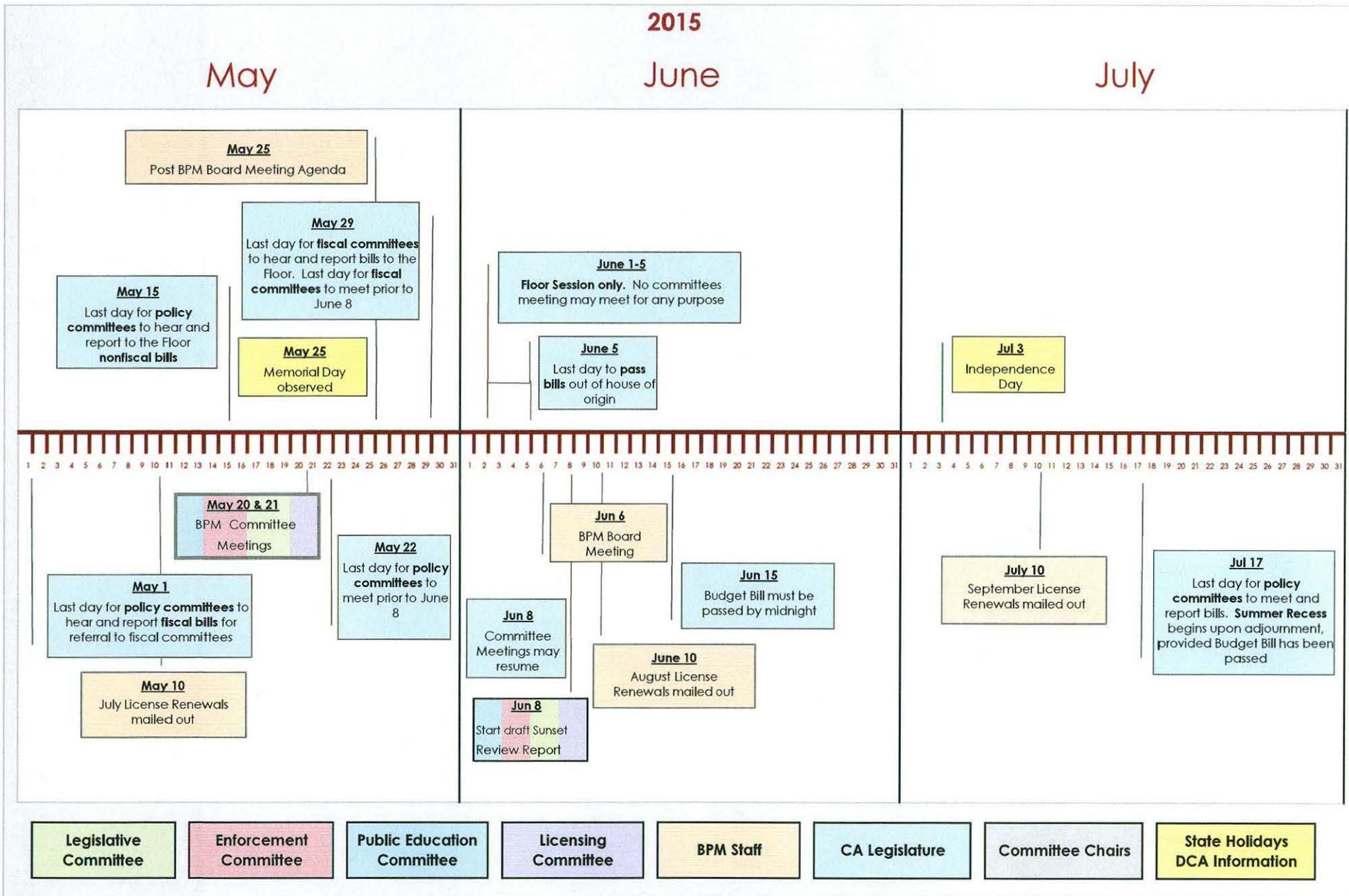


Kathleen Cooper, JD
Administrative Analyst



Jason S. Campbell, JD
Executive Officer

BPM QUARTERLY TIMELINE Leg 5-20-15 Attachment A



BOARD OF PODIATRIC MEDICINE

Program Activities and Legislative & Regulatory Matrix

LEGISLATION								
Ankle Certification Study Sec. 2472								
REGULATIONS								
Subject	Current Status	Date Approved by Board	Date Notice Published by OAL	Date of Public Hearing	Date of Final Adoption by Board	Date to DCA (and other control agencies for Final Review	Date to OAL for Review	Date to Secretary of State
Disciplinary Guidelines-Implementation of SB 1441	To BPM Enforcement Committee on 5-20-15							
Scrivener's Errors –BPM Continuing Education Regulations	To BPM Licensing Committee on 5-21-15							
BPM Regulations for Oral Argument	To BPM Enforcement Committee on 5-20-15							