



PUBLIC SESSION MINUTES

Friday, February 25, 2011

**Department of Consumer Affairs
1625 North Market Blvd.
Sacramento, CA 95834**

Members Present: Larry L. Renner, BS, RCP, RRT, RPFT, President
Barbara M. Stenson, RCP, RRT
Lupe V. Aguilera
Sandra Magaña
Murray Olson, RCP, RRT-NPS, RPFT
Richard L. Sheldon, M.D.
Charles B. Spearman, MEd, RCP, RRT

Staff Present: Dianne Dobbs, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager
Liane Freels, Staff Services Manager
Paula Velasquez, Staff Services Analyst

CALL TO ORDER

The Public Session was called to order at 9:35 a.m. by President Renner. A quorum was present.

President Renner opened by stating public comment will always be allowed on agenda items, however, under the Bagley-Keene Open Meeting Act, the Board may not take action on items brought up that are not on the agenda, but may decide to entertain the item at a future meeting. President Renner added, although not required, it would be appreciated if persons addressing the Board would state their name and organization for the record. He also advised the Board may limit public comment in order to allow sufficient time to conduct its business.

APPROVAL OF May 11, 2010 PUBLIC SESSION MINUTES

Ms Stenson noted a correction to the May 11, 2010 Public Session minutes. The credentials for Mr. Murray were incomplete and should be updated to reflect "RCP, RRT-NPS, RPFT."

Mr. Spearman moved to approve the May 11, 2011 Public Session minutes with the changes noted.

M/ Spearman /S/Stenson

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

PUBLIC COMMENT

Mr. Alan Roth, Respiratory Care Manager at Memorial Medical Center in Modesto, California, spoke about raising the minimum requirement for licensing to RRT and submitted a document for the record from CSRC in reference to that topic. Mr. Roth also spoke about the confusion between the differences in Scope of Practice for CRTs and RRTs throughout the State and individual hospitals.

DCA DIRECTOR COMMENT

(Kim Kirchmeyer)

Ms. Kirchmeyer, Deputy Director for Board & Bureau Relations, appeared on behalf of Acting Director Stiger providing an update on the Department of Consumer Affairs' (DCA) current projects and issues:

Transition: Acting Director Stiger has been asked to remain at DCA and continues to move forward with critical issues including consumer education and the Consumer Protection Enforcement Initiative, as well as the implementation of any Executive Orders.

Hiring Freeze: On Feb 15, 2011, Governor Brown issued an Executive Order for a statewide hiring freeze which prohibits the hiring of employees. The order did provide an exemption process for positions essential to carrying out certain responsibilities, and one of those was core functions of Department statutory missions. Ms. Kirchmeyer stated DCA might fit into this exemption category. The Department will work with the boards to submit exemption requests to include justifications based upon this order. Ms. Kirchmeyer stated at this point, DCA is waiting for a Budget Letter from the Department of Finance to address several existing questions. In the meantime, the Department is asking the boards to look at existing vacancies and to review the criticality of those positions.

Decrease in Cell Phones: On Jan 11, 2011, an Executive Order was issued calling for a statewide decrease in cell phones and smart phones by 50%. Director Stiger has made every attempt to implement this Order as soon as possible to meet this goal. The boards have submitted their reduction plans to the Department which is in the process of finalizing the reduction plan. The Department of Finance has asked for justification for any phones that may be retained. DCA is close to the 50% goal and has begun to shut off phones turned in from the boards and bureaus. Ms. Kirchmeyer thanked the Respiratory Care Board for exceeding the goal and turning in 67% of their cell phones.

State Vehicles: This Executive Order required the Department to look at the home storage permits, withdraw those that are non-essential, and conduct an analysis to determine the purpose and necessity for all vehicles within the Department. DCA has been working with the boards and bureaus to ensure everyone complies with this order. While this order does not directly affect the Board, it is a big project for the Department.

Expert Consultants: The Department is changing the way expert consultants are invoiced and paid. Written contracts will now be required between the boards and the individuals performing the expert reviews of enforcement or disciplinary cases, as well as those assisting with exam development. The Department is asking the boards to move forward with processing contract requests with these individuals while they look at ways to streamline the process. Ms. Kirchmeyer added that the Senate

Business and Professions Committee has shown some interest in possibly carrying some type of legislative remedy.

Consumer Protection Enforcement Initiative (CPEI): With the failure of SB 1111, the Department asked legal counsel to review the bill to determine if there were any proposals that could be implemented via regulation, rather than legislation. Legal advised there were nine areas that could be implemented via regulation allowing the boards' executive officers the ability to expedite the investigation and prosecution processes. Ms. Kirchmeyer thanked the Board for moving forward with these regulations.

Performance Measures: As part of the CPEI, the second set of performance measures has been posted to the DCA website. These measures show several critical enforcement statistics including how long it takes from the time a complaint is received until disciplinary action is taken against a licensee found in violation of the law. Ms. Kirchmeyer encouraged Board members to look at the statistics on the website and thanked the Board for including these measures in its agenda materials.

Enforcement Program Improvement Plan: To see what improvements the boards have made in the last several months, the Department is asking for updated Enforcement Program Improvement Plans.

BREEZE Project: This project replaces the Department's antiquated licensing and enforcement IT programs. The working session with the vendors and the boards' subject matter experts, reviewing all the requirements in the Request for Proposal, prior to entering into a contract, has been completed. Final bids are expected to be received by early March with the vendor beginning the project in August 2011. The RCB is in the first phase of the scheduled roll out in December 2012. Three different workgroups were formed to work on this project: Forms Revision Workgroup, Data Conversion Workgroup, and Reports Workgroup.

SB 1441 Uniform Standards for Substance Abusing Licensees: The Department continues to encourage the Board to implement these uniform standards and incorporate necessary language into regulations by placing them in the Disciplinary Guidelines.

EXECUTIVE OFFICER'S REPORT *(Stephanie Nunez)*

Ms. Nunez reviewed the following:

BAGLEY-KEENE OPEN MEETING ACT UPDATE

Ms. Nunez explained the most significant change relates to cell phone use during meetings. Specifically, Board members should not text or email each other during an open meeting and, if possible, limit cell phone use all together.

FORM 700, STATEMENT OF ECONOMIC INTERESTS

Ms. Nunez stated Board members must submit their Statement of Economic Interest (Form 700) by April 1, 2011.

STAFFING

Ms. Nunez discussed the staffing challenges over the past few years with the Executive Orders and hiring freezes. The Board currently has three vacancies that need to be filled. Efforts to move forward with a BCP did not go through, nor have exemption requests been successful. Because of the challenges, CE Audits, practice related enforcement cases, and enforcement related applications are some of the areas that have been affected and are falling behind. Although efforts are being made, Ms. Nunez stated she believes eventually this will be reflected in the Board's Performance Measures.

TRAVEL DIRECTIVE

From the Travel Directive, Ms. Nunez highlighted the following: When travelling, use the most direct, least expensive route; a taxi should only be used when travelling distances of 10 miles or less (unless justified); and no limo or car services should be used.

OFFICE SPACE/LEASE

Ms. Nunez stated the Board has been in its current office space for about ten years (three years beyond the original lease). Because it doesn't meet State ADA requirements, the Board is required to move. Ms. Nunez stated while looking for future office space, she is trying to be frugal. However due to the rising cost in the area, a rate increase of \$27,000 – \$40,000 per year is expected, and would bring the Board's annual rent cost up to about \$163,000 - \$176,000. The Board is also requesting ten percent more space.

APPRECIATION FOR KENNETH R. BRYSON, MED, RRT, CRAFTON HILLS COLLEGE

Ms. Nunez expressed the Board's appreciation to Kenneth Bryson, Program Director at Crafton Hills College, for working with the Board to arrange to have the October 2010 meeting at their campus. Though the Board was forced to cancel a few weeks prior to the meeting, it recognizes the effort and difficulties Mr. Bryson went through to set up this meeting location.

RESPIRATORY EDUCATION PROGRAMS PASS/FAIL DATA ON WEBSITE

Ms. Nunez reviewed the revised Pass/Fail data posted on the website. She added the Board received a compliment from the media for being the only respiratory licensing agency in the country to post this type of information.

Mr. Spearman recommended that posting this information cumulatively, as a five year average, would be more insightful especially for smaller schools. He suggested reaching this by adding information each year to the current data until achieving five years of data.

LICENSING FOR JOB CREATION STATISTICS

Ms. Nunez summarized the Licensing for Job Creation Statistics report, supported by the administration, looking at how quickly applicants are being licensed and out into the profession working. She presented two different sets of data. One from the Department, taken from ATS (which is a system not really designed to aid this Board in capturing that data), and the other compiled by Board staff which reflects more accurate numbers.

ON-LINE LICENSE RENEWAL UPDATE

Ms. Nunez stated a credit card license renewal system is expected to be available by April 2011. This is a temporary system not connected to any current databases and would be replaced with the BREEZE project around December, 2012. The cost to the Board will be \$4.60 per online renewal (2% of the fee), and \$1 to be paid by the licensee.

POLYSOMNOGRAPHY

Ms. Nunez expressed a couple of different issues: The first being, the California Department of Public Health has issued memos interpreting CDPH regulations, some of which the Board does not agree with. Specifically, CDPH has stated RN's need to provide an assessment as part of a sleep study. Ms. Nunez plans to meet with CDPH to determine if this can be classified as a respiratory care service, as well as to obtain a better understanding of their determining viewpoint and what can be done, if anything, to change this since it does not necessarily constitute better care for California, and simply makes it more expensive.

The second issue brought up by Ms. Nunez concerns the Medical Board's regulations implementing the registration of polysomnography technicians. The Board had requested technicians not be allowed to be grandfathered in without taking the examination. However, the decision was not up to

the Medical Board. Law states polysomnography technicians can be grandfathered in with a recommendation that they have practiced safely for five years. Another request, which was rejected by the Medical Board, was that only physicians and respiratory care practitioners be permitted to supervise.

Ms. Nunez expressed concerns about information received that the Board of Registered Polysomnography Technologist (BRPT), who provides the technician exam, was contacted by the American Academy of Sleep Medicine (AASM) requesting it make the exam easier to allow for increased passing scores.

PUBLIC COMMENT

Jack McGee, Government Affairs Committee Chair, California Society for Respiratory Care, inquired as to why vacancies are an issue since the Board is sustained by licensing fees.

President Renner responded, that even though the Board is essentially independent, it is still required to act under the directives or Executive Orders provided by the Governor and the Administration. The Board's staff members are State employees. Since there is a hiring freeze, those regulations and Executive Orders must be followed.

Mr. McGee inquired if the funds remained earmarked for Respiratory Care Board operations, to which Ms. Nunez replied affirmatively.

RECORD RETENTION POLICY

(Stephanie Nunez)

Ms. Nunez reviewed the proposed policy which was based on the Department's Electronic Data Retention Policy. The BREEZE project, and the development of a new database, prompted the Department's request for boards and bureaus to establish a record retention policy to limit the number of records that may need to be transferred. Ms. Nunez expressed her hesitancy to purge electronic records in an attempt to preserve historical reference, and suggests these records be kept for 60 years. She also stated the policy can be revisited once the BREEZE system is in place when other means of storing information might be available. Ms. Nunez is requesting the Board retain all enforcement files and purge some hard files, namely, cancelled, retired and deceased preserving only the application.

Discussion ensued.

Dr. Sheldon moved to accept the retention schedule as presented.

M/ Sheldon /S/Olson

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

FISCAL REVIEW

(Larry Renner)

President Renner reviewed revenue and expenditures identifying no notable differences in expenses versus revenues. He added the upcoming change in lease space will have an impact on expenditures in the future.

Dr. Sheldon inquired whether the Board is staying within budget.

Ms. Nunez replied the only issue has been increased costs with the Attorney General's office. The Board normally uses Legal Assistants for most cases but, as their time is limited, some cases have to be assigned to Deputy Attorneys General. The Senior Assistant Attorney General has agreed to work with the Board to reorganize some cases to reduce costs. Ms. Nunez added the Board is well within its overall budget.

Discussion ensued.

ENFORCEMENT STATISTICS

(Charles Spearman)

Mr. Spearman commented that the Board's enforcement statistics are in line with prior years. Fines imposed appear to have dropped down to a more normal level unlike last fiscal year and consistent with prior years.

Dr. Sheldon asked for data listing the main reasons for enforcement action taken against respiratory care practitioners.

PERFORMANCE MEASURES

(Stephanie Nunez)

Ms. Nunez reviewed results for the second quarter report showing the Board's progress toward meeting its enforcement goals:

Volume – Number of complaints and convictions received // Average: 69

Intake – Average cycle time from complaint receipt, to the date the complaint was assigned to an investigator. // Target: 7 days, Average: 2 days

Intake & Investigation – Average cycle time from complaint receipt to closure of the investigation process. Does not include case sent to the Attorney General or other forms of formal discipline. // Target: 210 days, Average: 119 days

Formal Discipline – Average number of days to complete the entire enforcement process for cases resulting in formal discipline (includes intake and investigation by the Board and prosecution by the AG) // Target: 540 days, Average: 582 days (this result is not within the Board's control).

Probation Intake – Average number of days from monitor assignment to the date the monitor makes first contact with the probationer. // Target: 6 days, Actual: 2

Probation Violation Response – Average number of days from the date a violation of probation is reported to the date the assigned monitor initiates appropriate action. // Target: 10 days, Actual: 1 day

Dr. Sheldon suggested maintaining some control over the performance measure questions to ensure the proper measures are being tracked and reflected as it has been his experience, in healthcare, patient expectations are frequently not based on reality so questions framed around those expectations score extremely low.

Discussion ensued.

Ms. Stenson requested the posting of this information on the Respiratory Care Board's website.

Ms. Nunez stated this information is currently listed on the Department's website but agreed to add a link on the Board's website as well.

PROPOSED REGULATORY LANGUAGE

NEW AND AMENDED LANGUAGE RELATED TO: DISCIPLINARY GUIDELINES, PROCESSING TIME AND CLEAN UP *(Stephanie Nunez)*

Ms. Nunez reviewed, in detail, the proposed new and amended language related to the Disciplinary Guidelines, Uniform Standards, citations and fines, education waiver, application processing time and clean up.

Inquiries and discussion ensued throughout review of the revisions.

President Renner requested changing the word "hospitals" under §1399.364, Orders, to the phrase "licensed health care facility"

Further discussion ensued.

Dr. Sheldon moved to move forward with the regulatory language with revisions.

M/ Sheldon /S/Stenson

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

PROBATION TERM, RESTRICTION OF PRACTICE: TRANSPORT *(Murray Olson)*

As part of the revisions to the Disciplinary Guidelines, Mr. Olson expressed the extreme importance of the Restriction of Practice prohibiting probationers from working as part of a transport team. Mr. Olson added being a member of a transport team is an advanced practice, often without a physician present, and where opportunity for the most harm exists.

PROBATION MONITORING DRUG TESTING FREQUENCY *(Stephanie Nunez)*

Ms. Nunez followed up on concerns from previous meetings regarding the annual number of drug tests for probationers established by the SB1441 uniform standards (104 times for the first year and 52 for subsequent years). Ms. Nunez explained the Uniform Standard #4 Subcommittee would be meeting March 9, to discuss testing frequency, where a final determination is expected with a different proposed schedule. She added, as of March 1, 2011, the Board has changed its testing requirements for probationers to a minimum of 24 times per year.

Discussion ensued.

Mr. Spearman stated, as discussed before, recognizing the need for public and patient safety, 104 and 52 seem like an excessive number of tests considering the cost and the moderate income of

RCPs. He added, randomly applied, it would seem to have some deterrent effect so the lower number should theoretically be effective.

Ms. Nunez responded the subcommittee is reviewing statistical data on the amount of drug use and the frequency of testing and what is reasonable and effective.

DISCIPLINE & PROBATION MONITORING COST RECOVERY

(Sandra Magaña)

Ms. Magaña asked for clarification on how cost recovery in cases of hardship is handled (either at staff or board level), if fees can be waived or discounted, and if there has been an increase in unrecovered costs.

Ms. Nunez responded that fees can be extended, not eliminated and the actual policy of cost recovery it set by the Board as determined by its members. She added most unrecovered costs come from licenses that have been revoked or surrendered. In those cases, they are sent to a collection agency where recovery can sometimes occur. The majority of costs recovered comes from probationers.

CALIFORNIA COLLEGE, SAN DIEGO PROGRESS REPORT

Bob Goodrow (Program Director, California College San Diego) and Laura Brown (Consultant on behalf of the California College of San Diego) addressed the Board.

Ms. Nunez began by stating this was a progress report, and noted transcripts and reports have been submitted to the Board's office as requested with no issues.

Inquiries and discussion ensued between the Board and the CCSD representatives.

Ms. Brown requested CCSD be relinquished from the mandate of reporting to the Respiratory Care Board and transition to oversight by the Bureau for Private Postsecondary Education (BPPE).

Dr. Sheldon moved that the requirements of the Board for reporting purposes be terminated at this time.

Ms. Nunez asked CCSD to continue to send the coordinating catalogue with each transcript as this has been of great help to staff.

Mr. Goodrow agreed stating this is now part of the process as a matter of "best practices."

President Renner encouraged CCSD to move forward with the improvement items suggested by the Board, including an updated system.

M/ Sheldon /S/Aguilera

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

CLOSED SESSION I

The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 12:41 p.m. and reconvened into Public Session at 1:22 p.m.

“TRANSITIONING THE RESPIRATORY THERAPIST WORKFORCE FOR 2015 AND BEYOND”
RECOMMENDATIONS – DISCUSSION
(Charles Spearman)

Mr. Spearman, who attended the three “Transitioning the Respiratory Therapist Workforce for 2015 and Beyond” conferences, reviewed a memo from Sam Giordano, Executive Director for the AARC, that went out to the people who participated in the input sessions. Mr. Spearman explained these meetings were to help move the profession to where it needs to be for 2015 and beyond.

Mr. Spearman reviewed some of the recommendations to come out of the meetings stating these are simply recommendations for the AARC Board of Directors. They are not meant to occur immediately, if at all, and will involve other agencies.

The following topics were discussed:

- Baccalaureate degree required as entry level to Respiratory Therapy.
- RRT requirement for licensure as a respiratory therapist (discontinuing use of the CRT exam and combine the exam components into the RRT exam).
- AARC to form a commission to assist state regulatory boards in transitioning to an RRT requirement for licensure.

President Renner stated that in order for this to be successful for California licensure, two things need to be considered:

1. Educating the existing licensees, and
2. Working with the NBRC to establish one entry-level exam.

Discussion ensued.

Mr. Spearman suggested Board members read the article to be published in the May 2011 AARC journal to get more facts and detail. At some point, the Board may need to decide whether to give its support or recommendations.

Further discussion ensued.

Ms. Nunez offered to put this topic on the next meeting agenda, after making sure each member has received a copy of the manuscript. She also offered to provide information on what administrative changes would be needed, including a proposed timetable.

PUBLIC COMMENT

Mr. Roth commented that CoARC (Commission of Accreditation for Respiratory Care) has posted its objection to the baccalaureate degree requirement on its website.

Discussion ensued.

ELECTION OF OFFICERS

Ms. Stenson moved to nominate Larry Renner for the office of President. No other nominations were received.

M/ Stenson/ S/ Spearman

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
MOTION PASSED

Ms. Stenson moved to nominate Murray Olson for the office of Vice President. No other nominations were received.

M/ Stenson/ S/ Renner

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
MOTION PASSED

CONSIDERATION TO CONTRACT SERVICES TO ESTABLISH BOARD RECOMMENDED BENCHMARKS

Ms. Nunez inquired whether the Board was interested in pursuing the topic of establishing recommended ratios of respiratory therapist to patients for different tasks and explained the possible benefits.

President Renner suggested first collecting data about current staffing.

Dr. Sheldon inquired whether the Board could ask the CSRC to develop recommendations.

President Renner requested staff contact CSRC to address this at their convention in May.

LEGISLATION OF INTEREST *(Larry Renner)*

President Renner recommended the following positions on legislation of interest:

AB 569 - Watch

AB 958 - Oppose unless amended

Ms. Magaña moved the Board accept those positions as recommended.

M/ Magaña /S/ Spearman

Unanimous: Aguilera, Magaña, Renner, Sheldon, Spearman
MOTION PASSED

MEETING CALENDAR – SCHEDULE MEETING DATES

The Board considered and agreed upon the following meeting dates:

Tuesday May 10, 2011

Friday, October 7, 2011

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

No public comment was received.

ADJOURNMENT

The Public Session Meeting was adjourned by President Renner at 2:26 p.m.

LARRY L. RENNER
President

STEPHANIE A. NUNEZ
Executive Officer