



PUBLIC SESSION MINUTES

Friday, October 7, 2016

**1747 North Market Blvd.
North Building, Room S-186
Sacramento, CA 95834**

Members Present: Alan Roth, MS MBA RRT-NPS FAARC, President
Thomas Wagner, BS, RRT, FAARC, Vice President
Mary Ellen Early
Rebecca Franzoia
Mark Goldstein
Ronald Lewis, M.D.
Judy McKeever
Laura Romero, Ph.D

Staff Present: Kelsey Pruden, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager

CALL TO ORDER

The Public Session was called to order at 10:04 a.m. by President Roth. Roll call was taken and a quorum was established.

PUBLIC COMMENT

President Roth explained that public comment would be allowed on agenda items, as those items are discussed by the Board during the meeting. He added that under the Bagley-Keene Open Meeting Act, the Board may not take action on items raised by public comment that are not on the Agenda, other than to decide whether to schedule that item for a future meeting.

APPROVAL OF JUNE 24, 2016 MINUTES

Dr. Lewis moved to approve the June 24, 2016 Public Session minutes as written. The motion was seconded by Ms. McKeever.

M/Lewis /S/McKeever

In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Wagner

Abstain: Romero, Roth

MOTION PASSED

RCP WORKFORCE STUDY (President Roth)

President Roth stated the Board's Executive Committee has been advising the UCSF Workforce Study group on issues and concerns raised during their analysis of the baccalaureate degree as entry level for respiratory therapists. The focus has been on getting the right type of people to speak in the study groups including directors, managers, therapists and educators of respiratory care. Focus groups have been scheduled for the month of October, and nine of the ten director interviews have been completed. President Roth commented that great progress has been made by UCSF.

Dr. Lewis inquired about the timeline for the study.

President Roth responded that UCSF is expected to compile the data from the focus groups by the end of this year and have a completed report for the Board in 2017.

Dr. Romero reviewed the breakdown of directors who completed the survey, with 68 percent being from general acute care or pediatric hospital and 10 percent from home health care. She inquired who made up the remaining 22 percent.

President Roth responded the remaining percentage represents sub-acute and long term care facilities, as well as durable medical equipment companies.

Request for Public Comment:

No comments.

FISCAL REVIEW: REVENUES, EXPENDITURES AND FUND CONDITION (Nunez)

Ms. Nunez discussed the Fiscal Review agenda attachments and pointed out some one-time costs in the expenditures. She also identified some increases in expenditures that have been outside of the Board's control. Ms. Nunez also pointed out that at the same time, AG and investigative expenditures have been reduced. Ms. Nunez explained that BreEZe has cost more than initially anticipated due to various issues, most of them having to do with the contractor prior to the product's rollout. The costs for BreEZe will be ongoing but are expected to decline somewhat, in the future, to a more manageable maintenance cost level.

Ms. McKeever inquired about the \$144,000 reimbursement listed under the Fund Condition.

Ms. Nunez explained these are payments received from Cost Recovery and Probation Monitoring costs. She added the current amount has decreased from an average of \$244,000 in past years.

Mr. Goldstein inquired about the increase in expenditure items: Office of Admin Hearings, Division of Investigation, and ProRata.

Ms. Nunez responded there have been fewer stipulated cases, resulting in more going to hearing. She also explained that the Fiscal Year 2015/16 DOI charges were actually for work performed two years prior (and that this amount can fluctuate from fiscal year to fiscal year) and that the ProRata costs are imposed by DCA for various services (i.e. legal, information technology, personnel, etc.).

Dr. Lewis inquired about the benefits of BreEZe.

Ms. Molina responded that from a staff perspective, the availability of reports and information is much more accessible and user friendly, and that the on-line functionality benefits staff, licensees, and employers. She added, the transfer of information and files from staff person to staff person is more efficient, and the system provides many benefits to stakeholders including the ability to request endorsements, duplicate licenses, and to pay for renewal, cost recovery, cite and fine, and probation monitoring online. She also stated that future functionality will include reminders to licensees when it is time to renew.

Ms. Franzoia asked if updates regarding case statuses can be sent to Board members via BreEZe.

Ms. Molina responded that function is part of a current authorization being implemented.

Request for Public Comment:

No public comment was received.

**CONSIDERATION TO AMEND SECTION 1399.395 OF DIVISION 13.6 OF TITLE 16 OF THE
CALIFORNIA CODE OF REGULATIONS TO INCREASE FEES
(Nunez)**

Ms. Nunez explained that because of the Board's current fund projections, a renewal fee increase is being proposed. Since Business and Professions Code section 3775 limits a renewal fee increase to no more than ten percent per year, she stated a \$20 increase in the renewal fee will sustain the fund for a few years, and added that the issue should also be revisited next year to determine if an additional increase is necessary.

President Roth stated the cost of BreEZe has been significant, as shown in the handout. However, the overall benefits and approval of the system have been positive. He added it is important to remember the budget, relative to revenue, is set for a flat number of applications and renewals.

President Roth moved to approve the proposed regulatory action to section 1399.395 as presented and direct staff to notice the language for public comment without setting a hearing. Also, absent any comments during the public comment period, authorize staff to finalize and make any technical non-substantive changes. The motion was seconded by Dr. Lewis.

Dr. Romero inquired when the last renewal fee increase was made.

Ms. Nunez responded, the last increase of \$30 was approved and implemented over 14 years ago.

Mr. Goldstein stated while it would be beneficial to have the authority in place, it would be ideal to not implement the increase unless necessary.

Ms. Nunez stated B&P Code §3775(k) allows the Board to reduce fees at any time.

President Roth stated unlike other states, the California Board is self-sufficient and does not depend on the State's general fund. He added the increase reflects mostly on what is relative to BreEZe and the costs associated to implement and maintain the system.

Ms. McKeever stated since the last renewal fee increase was in 2002, she would not be opposed to this increase, but would be against further increases beyond that.

M/Lewis /S/McKeever

In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Romero, Wagner, Roth

Unanimous

MOTION PASSED

SUNSET REVIEW UPDATE

(Nunez)

Ms. Nunez stated the Sunset Report is near completion and should be out to the Executive Committee for review within the next two weeks. Once approved, it will be printed and presented to the Legislature by December 1st. Ms. Nunez requested President Roth and Vice President Wagner to accompany her to the hearings before the Legislature. Ms. Nunez stated that she does not anticipate any major issues, with the biggest issue being the fee increase currently being addressed.

Dr. Lewis asked when the last Sunset Review was completed.

Ms. Nunez responded it is completed on a four year cycle. She added that the Board usually does not have big issues that some of the other boards may experience.

President Roth added that the Board has been very successful in meeting all of the goals in its Strategic Plan from 4 years ago.

Ms. Nunez indicated these goals came from the last Sunset Review and added the Board will be doing another Strategic Plan after this Sunset Review is complete to identify new goals and objectives.

Public Comment:

No public comment.

ENFORCEMENT PERFORMANCE MEASURES AND STATISTICS

(President Roth)

President Roth pointed out that, for the first time, the Board has met their "Formal Discipline" performance measure as the Attorney General's Office has stepped up their efforts in Fiscal Year 15/16. The time cases spend at the OAG dropped from 371 to 309. The time it takes to file an accusation from the date the OAG receives a case dropped from 126 (FY 13/14) to 106 (FY 15/16). The OAG also reduced the time it takes to file a stipulation after an accusation was filed from an average 240 (in previous years) to 181 (FY 15/16). President Roth added the Board has made a dramatic increase in the Citation and Fines collected as well.

Mr. Goldstein inquired about current Cost Recovery amounts and the reason for the decrease.

Ms. Nunez explained this has always been the case with Cost Recovery, primarily because once an individual has been revoked, the Board often never hears from them again. Although these cases are

sent to collection, it can be difficult to collect from revoked licensees. She added that when the Board first started using a collection agency (around 2008), the RCB sent 20 years of cases for collection of outstanding costs, so the amount collected was unusually high. Although the Board continues to see fees from the collection agency, they are fewer and less.

Dr. Lewis noted that there were 22 revocations and 14 probations with suspensions for the current fiscal year, and inquired if the Board has ever looked at the types of cases and reasons for the revocations and probations to try to find the main cause(s). He added a possible way to reduce this is through education. During the schooling process, if the hot topics which end in revocation and or suspension are known and brought to light, it may reduce these actions.

Ms. Nunez stated she agrees, and believes the ethics course could be used for this. She added it may be an item that should be added to the Strategic Plan.

Ms. Molina stated the revocations also encompass default decisions where there may be cases the Board might be willing to settle (i.e. place the individual on probation, etc.) However, if the individual does not contest the filing, it results in a default and revocation.

Dr. Lewis questioned, do these individuals not understand that if they present themselves, there are fairly decent remedies to protect their license or could they just be giving up on this particular profession. He concluded that since no "outgoing" interview is done, the Board may never know.

Ms. Molina indicated they are served documents given to them explaining the various opportunities they are entitled to but ultimately it is incumbent upon each individual to exercise those opportunities.

Discussion ensued.

Public Comment:

No public comment.

LEGISLATIVE UPDATE

a. Legislation of Interest:

Ms. Molina reviewed and provided updates regarding the 2016 Legislation of Interest.

- SB 66: Career Technical Education
Status: Signed by Governor on September 28, 2016
Board's Position: Watch
- SB 547: Aging and long term care services, supports, and program coordination
Status: Vetoed by the Governor
Board's Position: Watch
- SB 1155: Professions and vocation: licenses: military service
Status: Held under submission in Assembly Appropriations Committee. Bill has died
Board's Position: Support
- SB 1194: Professions and vocations: board actions and regulations
Status: August 24, 2016 – Hearing before Assembly B&P cancelled at the request of the author. Bill has died
Board's Position: Watch
- SB 1334: Crime Reporting: Health Practitioners: Reports
Status: May 27, 2016 – Held in Senate Appropriations: Bill has died.
Board's Position: Support

- SB 1348: Licensure applications: military experience
Status: Signed by the Governor, Chapter 174 (Statutes of 2016).
Board's Position: Watch
- AB 1939: Licensing Requirements
Status: May 27, 2016 – Held under submission in Assembly B&P Committee. Bill has died
Board's Position: Watch
- AB 2079: Skilled nursing facilities: staffing.
Status: August 25, 2016. Ordered to inactive file. Bill has died
Board's Position: Support if Amended
- AB 2606: Crimes against children, elders, dependent adults, and persons with disabilities
Status: May 27, 2016: Held under submission in Assembly Appropriations. Bill has died
Board's Position: Support
- AB 2701: Department of Consumer Affairs: boards: training requirements
Status: April 5, 2016 – Hearing before Assembly B&P cancelled at the request of the author. Bill has died.
Board's Position: Watch

b. 2016 Board-Cosponsored Legislation, AB 923

Ms. Nunez stated AB 923, sponsored by the Respiratory Care Board and the California Society for Respiratory Care, was signed by the Governor and will go into effect, January 1, 2017.

c. HR 2948, Medicare Telehealth Parity Act: Consideration to Support

President Roth inquired if the Board's basis for consideration requires sending a letter of support to the California congressional district.

Ms. Molina added the legislation was authored by California representative, Mike Thompson.

President Roth commented this is an important move forward for inclusion of respiratory care.

President Roth moved to send a letter of support for HR 2948 to the Honorable Mike Thompson. The motion was seconded by Mr. Goldstein

Dr. Lewis inquired if the letter will state support for the expansion under Medicare or for Telehealth programs

Ms. Pruden, Legal Counsel, stated the Board would be taking the position of the bill as a whole. If there were aspects of the bill the Board did not support, the position would be to "support if amended."

Dr. Lewis stated his concerns about giving a blanket approval to a bill that includes other items with it and would prefer a support be customized and focused on the profession of respiratory care.

Mr. Goldstein clarified support of the aspects of the bill which has respiratory care practitioners covered underneath Medicare or Telehealth.

President Roth amended the motion to state the Board will send a letter of support for HR 2948 to the Honorable Mike Thompson specifically pertaining to respiratory care practitioners. The motion was seconded by Mr. Goldstein.

Dr. Romero agreed with Dr. Lewis and voiced her concerns about providing general support for the bill. She believes the Board should take into consideration the different populations they serve.

Discussion ensued.

Public Comment:

No public comment.

M/Roth /S/Goldstein

In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Wagner, Roth

Abstain: Romero

MOTION PASSED

**CONSIDERATION FOR APPROVAL OF UPDATED LAW AND PROFESSIONAL ETHICS
CONTINUING EDUCATION COURSE PROVIDED BY THE CALIFORNIA SOCIETY FOR
RESPIRATORY CARE (CSRC)**

Ray Hernandez, Chair of the CSRC's Professional Advancement Committee and Ethics Course Program Coordinator, presented to the Board a draft of course content for consideration as requested at the June 24, 2016 teleconference meeting. He stated originally they wanted to infuse the content throughout the current course. However, because the content flowed so well it was determined it could be added as a module to the current content.

President Roth inquired if the course would be presented in slide and lecture form for those who would take the course online.

Mr. Hernandez responded, it would be integrated into both and would be added to the end of the existing course as a module.

President Roth inquired if there would be questions relative to the competency included in the added module.

Mr. Hernandez agreed, if the Board would like, they could be added. He mentioned that currently there are 30 questions in the course test. Any additional questions could be added after review and approval by the Board.

Ms. Nunez stated she was not aware that the entire course content was going to be provided for review, only the additional information. She added, she does not see the relevance or benefit of requiring licensees, who are completing continuing education, to read about why they have to complete continuing education and why the numbers have increased. Ms. Nunez also questioned the appropriateness of a chart including the CE hours and license fees while an increase in those fees is approaching.

Mr. Hernandez replied that the information gleaned from the Board's packet was intended for educational purposes only as the CSRC wants this course to always be relevant for respiratory care practitioners. However, if the Board wished it to be removed, it certainly would be.

Mr. Goldstein commented he likes the idea of having every therapist understand the future of respiratory care so they will not be upset as things progress and added, he agreed, in concept, with the proposed course content, but would like to see a finer tool before he would approve it.

Ms. McKeever had several concerns and asked Mr. Hernandez if anyone has approached the state colleges as far as baccalaureate programs as it seems they do not want anything to do with respiratory care education. She stated her concern that there are currently only three schools where

individuals can take the higher level program and added state institutions should be encouraged to include respiratory care. Finally, she stated respiratory care employers need to understand that if respiratory care therapists are going to be required to get a BS degree, they should get increases in pay just like the nurses do. She believes that some incentive is needed for respiratory therapists to get better educated because it is going to cost them a lot of money.

Mr. Hernandez responded that in terms of the state colleges, the legislature has tried to address this with the pilot baccalaureate degrees at the community college level. The reality is that the public system is not able to meet the needs of four year degrees and the workforce. Mr. Hernandez also agreed that it is important, and partially why the provided program was written. He added, if respiratory therapists want to have parity with nurses, employers and practitioners need to understand that one basic element of the formal education is what needs to happen.

President Roth stated he would like to see added in that the education is information relative to the NBRC and that a credential from the NBRC needs to be kept current as it now has a five year expiration date. Practitioners need to be part of the NBRC and maintain the continued competency program in order to keep their credential.

Mr. Goldstein interjected that at this point, he does not believe the law requires an individual to maintain their certification with the NBRC once you have a license and you meet continuing education requirements to maintain that license.

Ms. Nunez stated the reason the Board developed the course was to try and address enforcement issues. It was called Professional Ethics and Law and was intended to teach people what was right and wrong in the professional arena of ethics as well as the Board's law, to reduce enforcement. The initial intent was not to promote what the Board was doing related to current affairs. It was more to talk about consequences for example, if a licensed practitioner were to drink and drive or engage in some other unethical or illegal action. And while she believed that the items being discussed all had merit, perhaps they were items for an additional course and not necessarily this one.

Ms. Pruden, Legal Counsel, articulated a few points of concern and wanted to make sure that the Board is adhering to the legal statues of what is required for this course. She stated, as she understood it, this additional course content was being added to the existing course content and wanted to know if it would be integrated in a way that would maintain the current required 3 hours that it takes to complete the course (two hours: Professional Ethics and one hour: California Law) or if it would be adding additional time. She inquired where Mr. Hernandez saw the additional content fitting in, either under California Law or the Professional Ethics aspect.

Mr. Hernandez responded, in looking at the number of words currently in the additional content, it would most likely add approximately 30 minutes to the existing course. The intention is to add it as a module at this juncture but that in the upcoming new cycle in 2018, it would be integrated into all of the new requirements that are forthcoming. The time would remain at 3 hours for the live course with the additional material being an addendum to all of the other materials already being given. Any additional time for the online piece would vary depending on each individual's ability to read and absorb the information. An average time of 20 to 30 minutes would be added to the course as an additional module.

Ms. Pruden inquired if this section is being considered as a separate segment than the original course.

Mr. Hernandez responded, yes it would be, alluding to the title of Professional Advancement given to the additional content. He stated, with Board approval, it can stand as its own module.

Ms. Pruden reiterated the requirements for a segment to include, a narrative or discussion and scenario as well as at least one question with three to six possible responses and only one correct answer.

Discussion ensued concerning legal statute and the requirements necessary when adding segments to an existing course.

Dr. Lewis moved to have all the revisions made to the course and the entire content brought back to the Board for review and approval. The motion was seconded by Ms. McKeever.

President Roth requested the State Comparison chart be reconfigured to include pertinent information but remove the renewal fee section.

Final discussion ensued with some change requests to Mr. Hernandez. Ms. Nunez was identified as the point of contact for Mr. Hernandez during the revision process.

M/Lewis /S/McKeever

In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Romero, Wagner, Roth
MOTION PASSED

ELECTION OF OFFICERS

a. Vice President

President Roth opened the floor for nominations for Respiratory Care Board Vice President.

Ms. Early nominated Mr. Wagner for Vice President. No other nominations were made.

A motion to nominate Mr. Wagner for Vice President was made by Ms. Early and seconded by Ms. Franzoia.

No public comment.

M/Early /S/Franzoia

In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Romero, Wagner, Roth
Unanimous
MOTION PASSED

b. President

President Roth opened the floor for Nominations for Respiratory Care Board President.

Dr. Lewis nominated Mr. Roth for President. No other nominations were made.

A motion to nominate Mr. Roth for President was made by Dr. Lewis, and seconded by Ms. McKeever.

No public comment.

M/Lewis/S/McKeever

In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Romero, Wagner, Roth
Unanimous
MOTION PASSED

2017 MEETING DATES: CALENDAR

The following Public Meetings were scheduled for 2017:

March 10, 2017 in Southern California
June 30, 2017 Teleconference Meeting
October 13, 2017 in Sacramento, California

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

No public comment was provided at this time.

FUTURE AGENDA ITEMS

No future items were identified.

ADJOURNMENT

The Public Session Meeting was adjourned by President Roth at 11:58 p.m.

ALAN ROTH
President

STEPHANIE A. NUNEZ
Executive Officer