



PUBLIC SESSION MINUTES

**Friday, June 7, 2019
TELECONFERENCE**

Teleconference Locations:

**DCA Headquarters
North Market Hearing Room #102
1625 North Market, Sacramento, CA 95834**

**DCA DOI – Valencia Field Office
MBC Conference Room, Dist. 05
27202 Turnberry Lane, Suite 280
Valencia, CA 91355**

**Pima Medical Institute
111 Campus Way, Suite 100, Room 125
San Marcos, CA 92078**

**South San Francisco Grand Library
Grand Meeting Room
306 Walnut Avenue
South San Francisco, CA 94080**

Members Present: Sherleen Bose (San Marcos)
Mary Ellen Early (Valencia)
Mark Goldstein (Sacramento)
Ricardo Guzman (Sacramento)
Michael Hardeman (South San Francisco)
Judy McKeever (South San Francisco)

Staff Present: Fred Chan-You, Legal Counsel (Sacramento)
Stephanie Nunez, Executive Officer (Sacramento)
Christine Molina, Staff Services Manager (Sacramento)

CALL TO ORDER

The Public Session was called to order at 10:06 a.m. by President Goldstein.

Ms. Molina called roll (present: Bose, Early, Franzoia, Goldstein, Guzman, Hardeman), and a quorum was established.

PUBLIC COMMENT

President Goldstein stated the Board encourages public comment as the issues being discussed directly affect the profession and the RCP's in attendance. He 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 MARCH 1, 2019 MEETING MINUTES

Ms. Early moved to approve the March 1, 2019 Public Session minutes as written.

Request for Public Comment: No public comment was received.

M/Early /S/Guzman

In favor: Early, Goldstein, Guzman, Hardeman

Abstain: Bose, McKeever

MOTION PASSED

LEGISLATION

Ms. Molina reviewed three additional bills that have been identified as legislation of interest following the March 1, 2019 Board meeting.

AB 613: Professions and vocations: regulatory fees.

This bill would authorize each board within DCA to increase their fees every 4 years in an amount not to exceed the increase in the consumer price index in the last 4 years. Ms. Molina stated the Board's executive office received clarification from the bill's author that this bill would not preempt existing authority to adjust fees through the legislative process and therefore would not impact the Board's future increases already in place.

Staff Recommended Position: Watch

Request for Public Comment:

Amanda Conley inquired if the consumer price index decreased does that mean the fees would lower as well. President Goldstein responded that the Board could take the recommended "Watch" position to wait for clarification on questions such as this one because until the bill hits the floor it is sometimes unclear.

Mr. Guzman moved to take a Watch position on AB 613.

M/Guzman /S/Early

In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever

MOTION PASSED

SB 53: Open meetings

This bill would revise the Bagley-Keene Open Meeting Act regarding state body-created advisory committees, by requiring two-member advisory committees to hold open and public comments if one or more of the advisory committee members is a member of the larger board, committee, or commission, and the advisory committee is supported either wholly or partially by state funds. The purpose of this bill is to make the Bagley-Keene Act mirror provisions of the Ralph M. Brown Act, which governs local governments' open meetings.

Staff Recommended Position: Oppose unless amended

Request for Public Comment: None received.

Mr. Guzman moved to oppose SB 53 unless amended.

M/Guzman /S/Bose

In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever

MOTION PASSED

HR 2508: BREATHE Act

This bill is a 3-year pilot that would allow respiratory therapist to furnish disease management services to Medicare beneficiaries with COPD. Its purpose is to demonstrate the value RTs bring to the health care system and their patients through improved health outcomes and lower costs and to identify RTs as telehealth practitioners in the Medicare statute.

Staff Recommended Position: Support

President Goldstein stated this is an important piece of legislation and asked for comments from the board.

Ms. Early stated this piece of legislation is long overdue.

Ms. Bose stated she has seen that the profession is very supportive of this legislation.

Request for Public Comment:

Ms. McKeever moved to support HR 2508.

M/McKeever /S/Early

In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever

MOTION PASSED

Ms. Molina then provided an update regarding those bills for which the Board previously adopted positions, as listed below:

- AB 193: Professions and vocations
Status: This is a two-year bill and dead for 2019
Board's Position: Watch
- AB 241: Implicit bias: continuing education requirements
Status: Referred to Senate Rules Committee on 5/14/19
Board's Position: Watch
- AB 476: Department of Consumer Affairs: task force: foreign-trained professionals
Board's Position: Watch
Status: Referred to Assembly 2nd Reading on 5/20/19
- AB 496: Business and Professions
Board's Position: Watch
Status: Referred to Senate Rules Committee on 5/14/19
- SB 181: Healing arts boards
Board's Position: Watch
Status: In Senate, referred to Committee on Rules on 2/6/19
- SB 207: Medi-Cal: asthma preventive services
Board's Position: Watch
Status: Senate Third Reading as of 5/16/19

Request for Public Comment: No public comment received.

**PROPOSED REGULATORY LANGUAGE FOR APPROVAL: BASIC, INTERMEDIATE, AND
ADVANCED RESPIRATORY CARE**

Ms. Nunez stated the original Joint Statement between the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) and the Respiratory Care Board (RCB) was released in April 2019. The statement was the product of over a year of work with input from legal counsel, experts from both professions and staff from both boards. The main focus throughout the discussions was on long term care and subacute facilities. While home care was ultimately included in the Joint Statement, the Board understands that it is unique and has a different set of circumstances. She stated additional work needs to be done in this area. While the Joint Statement still stands as written, because of the way home care is set up, there appears to be a need for some type of exemption or certification training for LVNs to perform some respiratory tasks in home care only. The proposed language was based on communication prior to receiving much feedback from the home care industry. The legislation passed last year, which this regulatory language is based on, allows the Board to define basic, intermediate, and advanced tasks and creates an avenue to allow for public comment. Currently, the language does not include or exclude home care. It has however picked up the momentum that it is tied to home care. The Board would like to hear comments about why home care needs to have LVNs participate in that care.

President Goldstein explained public comment will be opened up to each location starting with the Sacramento audience.

Request for Public Comment:

There were numerous public comments received in support of carving out home care from the joint statement. Some of those identified from the public in attendance are listed below:

| <u>MEETING ATTENDEE</u> | <u>ORGANIZATION</u> | <u>CALL-IN LOCATION</u> |
|--------------------------------|-----------------------------|--------------------------------|
| Denise Ordonez, RN | Premier Healthcare Services | Valencia, CA |
| Ronda Olson, RT | | Valencia, CA |
| Sheila Kun, RN | CHCA | Valencia, CA |

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| Jerry Hammersley, RCP | New Start Home Medical Equip. | Valencia, CA |
| Cheryl Tsieprati | Family Advocate | Valencia, CA |
| Russelle Cazares, RCP | CHLA | Valencia, CA |
| Jennifer Pugh, DNP, RN, CPNP | CHLA | Valencia, CA |
| Alejandro Galvan, CRT, CEP | | Valencia, CA |
| Tosha Kocka, RN | Premier Healthcare Services | Valencia, CA |
| Gabriella Rodriguez | Premier Healthcare Services | Valencia, CA |
| Rizza Bautista, LVN, DSD, BSHA | New Start Home Medical Equip. | Valencia, CA |
| Amy San, RN | Accent Care Home Health | Valencia, CA |
| Stephanie Bailey, Administrator | Accent Care Home Health | Valencia, CA |
| Danny Mascar | Parent | Valencia, CA |
| Sunny Henderson, Reg Dir | Accent Care Home Health | Valencia, CA |
| Felor Bahadori, RN | Annex Healthcare | Valencia, CA |
| Lisa Martinez | ADON Neuro Restorative | Valencia, CA |
| Diana Campos, RN, BSN, PHN, CRRN | Assisted Healthcare | Valencia, CA |
| Luis Ayala | CHCA | Valencia, CA |
| Tony Venzor | Premier Healthcare Services | Valencia, CA |
| Lupe Arias (parent) | Premier Healthcare Services | Valencia, CA |
| April Ashburn (parent) | | Valencia, CA |
| Claudia Menendez | Premier Healthcare Services | Valencia, CA |
| Janine Williams, LVN (parent) | Premier Healthcare Services | Valencia, CA |
| Kim Tasker, Clin Director | Premier Healthcare Services | Valencia, CA |
| Kraig Morflock, RCP | CLHF Homes | Valencia, CA |
| Eli Kumornier | CLHF Homes | Valencia, CA |
| Leanne Kinney, RN | Aveanna Healthcare | Sacramento, CA |
| Clare Bello, RN, MSN, PNP | Aveanna Healthcare | Sacramento, CA |
| Jerin Johnson | Aveanna Healthcare | Sacramento, CA |
| Sue Kwicien, RN | Premier Healthcare Services | Sacramento, CA |
| Kenny Ha | Premier Healthcare Services | Sacramento, CA |
| Kallie Ray | Premier Healthcare Services | Sacramento, CA |
| Victoria Florentine, BA, RRT, SSM, AE-C | Select Respiratory Services | Sacramento, CA |
| Erica Drury | Maxim Healthcare Services | Sacramento, CA |
| Anna Leach-Proffer | Diability Rights California | Sacramento, CA |
| Alex Saldana | Oxford HealthCare | Sacramento, CA |
| Mira Morton | CCHA | Sacramento, CA |
| Braden Oparowski | CAHSAH | Sacramento, CA |
| Ray D. | | Sacramento, CA |
| Amanda Connelly (parent) | | Sacramento, CA |
| Debbie Dixon | Always Home Nursing | Sacramento, CA |
| Sue Quincy | | Sacramento, CA |
| Pat ... , LVN | | Sacramento, CA |
| Kevin McBride | Premier Healthcare Services | Sacramento, CA |
| Gary Becker (parent) | | So. San Francisco, CA |
| Alisa | Premier Healthcare Services | So. San Francisco, CA |
| Anne | Premier Homecare Services | So. San Francisco, CA |
| 20 attendees spoke at this location | Names given were inaudible | San Marcos, CA |

President Goldstein thanked all those who provided comments. He stated the mandate of this Board is public protection and reiterated that was the intent of the work that has been done on this language. However, the Board recognizes there have been some valid comments provided. In response, President Goldstein made a motion to exclude home care from this language and continue to work with the BVNPT to modify the Joint Statement accordingly.

Mr. Chan-You asked for clarification if the motion was to direct staff to revise the proposed regulatory language and include a homecare exemption. He stated, as it stands, this is just language staff has brought before the Board for approval.

Ms. Nunez suggested the Board take no formal action at this point but rather assign two Board members to come back to the next meeting with a proposal and possible regulatory language. She added there is still work to perform with the BVNPT to address and possibly carve home care out separately. She requested staff be able to work with the executive committee which consist of two RCP Board members to address this.

Ms. McKeever stated her interest in being a part of this work group.

Mr. Chan-You stated no action needs to be taken at this time because the Board is being asked to approve the current language and the Board does not appear to be comfortable moving forward with this language. It is possible for staff to come back at the next Board meeting with different language.

Ms. Early stated other issues were brought up besides home health care, such as LVN's accompanying children to school and in congregate living facilities. These things also need to be taken into consideration and included. She inquired if this would be considered a substitute motion.

Public Comment:

Erica Drury, Maxim Healthcare Services, requested the Board move to rescind the statement while determining other options because it is currently active and has an effect on home health care.

McKeever stated that would have to be redefined along with the BVNPT.

Ms. Nunez added as this is a joint statement, it would be inappropriate for the RCB solely to rescind it.

Marianne Doral, legislative specialist, asked that the motion be clarified stating the audience is unclear if the original motion has been modified.

Ms. Molina clarified the motion is to exclude home care from the language and continue to work with the BVNPT to modify the Joint Statement.

M/Guzman/S/Bose

In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever

MOTION PASSED

PROPOSED REGULATORY LANGUAGE FOR APPROVAL: AMEND DISCIPLINARY GUIDELINES, SUBSTANTIAL RELATIONSHIP CRITERIA (FOR LICENSEES), REHABILITATION CRITERIA (FOR LICENSEES), DRIVING RECORD, AND HANDLING OF MILITARY APPLICATIONS; ADD SUBSTANTIAL RELATIONSHIP CRITERIA FOR APPLICANTS AND REHABILITATION CRITERIA FOR APPLICANTS (AB 2138); REPEAL SPONSORED EVENTS PROVISIONS

Mr. Chan-You stated at the last meeting the Board approved staff to start work on language for a few regulations. The first he addressed was §1399.326: Driving Record. The Board voted to approve the language, however after the meeting, it was identified that the item was not on the agenda so in order to comply with the Open Meetings Act, the Board needs to re-vote to adopt the language and to allow staff to start the rule making process and the authority to make technical and non-substantive changes if necessary.

The proposed regulatory language was presented to the Board for approval to pursue promulgating regulatory amendments which reflect revisions related to the implementation of the AB 2138 provisions.

Ms. Bose moved to adopt the language for §1399.326 as written, start rulemaking process and grant staff the authority to make technical, non-substantive changes.

Public Comment: No comments received.

M/Bose/S/Guzman

In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever

MOTION PASSED

Mr. Chan-You reviewed the second item, AB 2138, thanking the staff for working with him on the language. In order to make the review process easier, proposed changes for the regulatory language on AB 2138 essentially combine two sections into one under rehabilitation criteria. One dealt with the denial of licenses and the other revocation or suspension. Mr. Chan-You recommends the Board combine the two together. In the previous version, the rehabilitation criteria for suspension and revocation has been changed to a two-step process which was reflected in the language approved at the last meeting.

Ms. Nunez stated the intent is the same but the language has been restructured to be more consistent. There are non-substantive changes in §1399.370, striking of quite a bit in §1399.372 with new language added and then removing the entire section of §1399.371.

Mr. Chan-You added denial for licensees is now clear and includes a two-part process in terms of evaluating rehabilitation, with the same being applied to suspension and revocation making it more consistent.

Ms. McKeever inquired about the suspension language.

Mr. Chan-You clarified the term suspension comes from a statute, so the regulation language is reflective of what the statute is authorizing. In this case, mandating the standards that the Board uses whenever they are considering discipline of a license.

Ms. Nunez clarified that Suspension, in the Disciplinary Guidelines, can be found under Specialty Conditions #19 and is the Board's choice to include or not include adding it is not the Board's primary means disciplinary action.

Ms. McKeever inquired whether Specialty Condition #22, Competency Examination would include someone having to retake the licensing examinations.

Ms. Nunez replied that is correct and is currently reflected in the guidelines. It is not commonly used but does happen on occasion. Specialty Conditions are not always in every order but if someone's competency is in question and the Board wants to ensure they can perform, the Board will make them retake the licensing exam.

Ms. Molina added that often times it is required in Petitions for Reinstatement prior to the license being reinstated.

Mr. Guzman moved to approve the changes for AB 2138 as submitted by legal counsel in §1399.370, §1399.372 and striking §1399.372.1 and grant staff the authority to make technical, non-substantive changes.

Public comment: No comment received.

M/Guzman/S/Early

In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever

MOTION PASSED

FUTURE AGENDA ITEMS

No future agenda items were raised.

Request for Public Comment:

No comments were received.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

No public comments were received.

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CLOSED SESSION

The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 12:25 p.m. and reconvened into Public Session at 12:32 p.m.

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ADJOURNMENT

The Public Session Meeting was adjourned by President Goldstein at 12:32 p.m.

MARK GOLDSTEIN
President

STEPHANIE A. NUNEZ
Executive Officer