



PUBLIC SESSION MINUTES

Monday, May 14, 2018

**Monterey Marriott
Los Angeles Room
350 Calle Principal
Monterey, CA 93940**

Members Present: Alan Roth, MS, MBA, RRT-NPS, FAARC, President
Thomas Wagner, BS, RRT, FAARC, Vice President
Mary Ellen Early
Rebecca Franzoia
Mark Goldstein, MPA, RCP, RRT
Michael Hardeman
Sam Kbushyan, MBA
Ronald Lewis, MD
Judy McKeever, RCP, RRT

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

CALL TO ORDER

The Public Session was called to order at 12:01 p.m. by President Roth. Ms. Molina called roll (present: Early, Franzoia, Goldstein, Hardeman, Kbushyan, Lewis, McKeever, Wagner, Roth) 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 FEBRUARY 2, 2018 MEETING MINUTES

Dr. Lewis moved to approve the February 2, 2018 Public Session minutes as written.

Request for Public Comment:

No public comment received.

M/Lewis /S/Kbushyan

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

EXAMINATION AND EDUCATION PROGRAM DATA

President Roth presented the examination and education program data to determine if there are respiratory education programs graduating a disproportionate number of students who are later subject to disciplinary action and to further examine the need to seek legislative authority to approve/disapprove a school based on clinical practice and/or exam pass/fail rates and/or accreditation status to ensure poor performing programs are not continuing to move unprepared students through their programs.

President Roth stated when looking at the data, there are schools and programs which have a disproportionate number of students and graduates that have fallen under disciplinary action.

Ms. McKeever stated Concorde Career College's numbers were horrible and inquired what the Board could do about those numbers.

President Roth responded that schools have come to the Board in the past to explain their plan of action after being reviewed by CoARC. This allows the Board to determine where programs might be falling short and to look at what other authority, if any, the Board may need to seek relative to schools. He stated the Board does not currently have legislative authority in this area, similar to what the nursing board has. He added this has been brought up several times at prior Board meetings and now the data has been compiled so the issue can be discussed to determine if the Board wants to move forward to pursue additional authority in this area.

Dr. Lewis inquired if this would override what the current accreditation body already looks at? He added, as he understands it, the Board is looking to develop future regulations that would supersede the accreditation body already in place.

President Roth responded that after a program has been approved, it only gets looked at by CoARC every ten years. In that ten-year period, unless something is happening, CoARC does not do site visits or recommends any program changes.

Mr. Kbushyan stated it seems the schools with issues are those with larger geographical areas and career colleges, which are for profit schools and seem to have the most issues versus the community colleges funded by the district or state. Mr. Kbushyan added, while he does not have anything personally against career colleges, the issue with private colleges is they do not have a rank and file system. It is simply about how many people they can push through and how much money can be made.

President Roth stated this program pass/fail information is public information posted on CoARC's website as well as on the Board's website and will hopefully be viewed by students prior to deciding to attend one of these career colleges.

Mr. Goldstein complimented staff for gathering this data and stated examining it will allow the Board to approach a very nebulous issue and hopes it will help those involved to see where they stand.

President Roth explained if this information is widely disseminated, people will be able to make a positive decision regarding their education reducing barriers to enable people to enter the profession.

Ms. Early asked if it is true that students getting a degree from a community college must be on a waiting list, whereas with a career college you can get in quickly if you are able to pay the tuition. She also inquired if students seeking a bachelor's degree who first have to get their associate degree, get general education at community college and then go to career college for their clinical training.

President Roth responded that the prerequisites at a community college are usually what involves a wait list not the respiratory care education.

President Roth moved to seek legislative authority to approve/disapprove a school based on clinical practice and/or exam pass/fail rates and/or accreditation status to ensure poor performing programs are not continuing to move unprepared students through their programs.

M/Roth /S/McKeever

Dr. Lewis stated more needs to be done to present this to a sponsor or legislative body. He added programs have been identified but no remediation plans have been offered.

Ms. Nunez stated the Board has some authority in 3740, subdivision (h) but has not fully used it. She added she agrees with Dr. Lewis that this may not be enough to make changes and should use the authority the Board already has to communicate with interested parties.

Ms. Nunez responded, she can bring that information back to the Board to do a comparison. She added the LVN Board does do a thorough review of every school. Ms. Nunez further stated, the Board must decide if it wants to be an education accreditation entity or leave that to those entities already doing that (both in private industry and as the State's private postsecondary education branch).

Mr. Goldstein asked how many and what percentage of students have participated in these programs? He added, he believes students should be exposed to this information before they get admitted into a program and sign a document to state that effect. He also stated this deserves further study with less government involvement.

Ms. Molina stated the Board outright denies fewer than five applicants a year (meaning those not offered stipulation terms) She added, the criminal related matters reflected in this data are for individuals already licensed. These are not numbers for applicants.

Ms. Franzoia questioned if this data was for just 2017 and if so, what is the cyclical amount of time a person can repeat the exam.

President Roth replied 30 days.

Ms. Franzoia responded and pointed out that these number could be showing candidates that are repeating the test many times thus increasing the percentage.

Ms. Nunez stated looking at the practice related complaints received in the past 10 years, could show numbers not reflective of these percentages.

President Roth stated every five years the test matrix changes for the national examination to reflect current practices. The pass rate for the therapist exam has stayed fairly consistent over the past ten years even with the latest change to the examination (staying between 65% - 75%). He added, it is important to understand only 8 states (including California) require the RRT as the minimum for licensure.

Ms. McKeever commented that the Criminal and Practice Related Matters are also very high. She added that private colleges cost \$60,000 and higher, and she does not understand why their complaints are so much higher than other schools. She questioned whether they are not teaching or choosing their candidates correctly? She inquired if there is a way the Board can ask CoARC to get involved.

Ms. Nunez responded CoARC is involved as programs cannot operate until they have accreditation by CoARC and this gets reviewed every ten years.

Ms. McKeever inquired whether if based on these numbers reflecting this amount of practice related matters, the Board ask CoARC to visit these programs sooner than ten years?

Vice President Wagner agrees with giving notice to the institutions with poor performance to let them know the Board is aware of these numbers and is pursuing avenues which might correct the situation. He added, he is an instructor of first year students at Ohlone College and he covers these matters with his students.

Request for Public Comment:

Mike Madison encouraged the Board to share this information with CoARC. Some of these institutions have been habitually on probationary status. His concern is if they do nothing to correct an observation, they could still be sending graduates out for 2 – 3 years. If they somewhat address a situation, they could still be in business for 6 years turning out less than good candidates. He stated, the Board has quantitative data that shows poor performing schools create problems for the public. He urges the Board to share the data with CoARC and see if it will get them to be more aggressive with their accreditation and reaccreditation standards.

Ricardo Guzman, Clinical Coordinator Napa Valley College & CSRC Education Committee Chair, added CoARC looks at the quality of the program by doing employer and graduate surveys about 4-6 months after the student graduates. This would be suggesting they look at another important piece of information and further examine the programs.

Wayne Walls, RCP, Lakewood California, concurs with both Mr. Madison and Mr. Guzman's comments regarding this matter. Part of problem may be the screening of students coming in (background checks, drug screening, etc.) These numbers are shocking and CoARC does not look at this type of information. He added, he agrees the schools should be put on notice.

President Roth rescinded his prior motion and moved to disseminate the data to all respiratory care programs, and to send the information to CoARC to determine what action, if any, can be taken by the Board, or by CoARC as the accrediting body.

Request for Public Comment:

Mike Madison reiterated previous comments stating it is really an issue is whether the board can get CoARC to be more aggressive in their accreditation.

M/Roth /S/Goldstein

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

President Roth stated the Board will come back to Enforcement Objective No. 6 after getting a response from CoARC, and after collecting additional data.

DRAFT CONTINUING EDUCATION REGULATION AMENDMENTS FOR CIRCULATION

Vice President Wagner and Mark Goldstein recused themselves from this agenda item due to the possibility of a conflict of interest as executive board members of the CSRC.

President Roth presented the draft regulatory amendments to the Board for consideration to circulate the language and obtain stakeholder feedback prior to initiating the rulemaking (regulation) process.

President Roth opened the discussion stating this is one of the areas practitioners are very confused about throughout the State relative to what constitutes a CEU. There are some CEUs out there that essentially let you read a pamphlet or listen to an infomercial (sponsored content by industry) and answer four questions at the end to receive CEU credits. This helps clarify the issues as far as what is allowed and available. He added, continuing education is education to stay current with their practice, not just the accumulation of CEUs that are less than useful.

Ms. Nunez stated this is suggested language to get the Board's feedback on initial language to start a discussion. The rulemaking process will not start for about 6 months.

Ms. Nunez reviewed additional proposals:

- A) Adding the four providers to subdivision (a) of Section 1399.351: American Lung Association, Allergy and Asthma Network, Society for Critical Care Medicine (SCCM), and National Asthma Educator Certification Board.
- B) Add Registered Respiratory Therapist to subdivision (a) of Section 1399.353. Ms. Nunez stated this would mean counting the minimum standard as continuing education. Ms. Molina added this would be for individuals who only hold a CRT and pursue the credential at a higher level.
- C) Add the Asthma Educator certification to subdivision (b) of Section 1399.353.
- D) Modify 1399.353 to acknowledge Pulmonary Rehabilitation Certified, Tobacco and Smoking Cessation-Certified and COPD Educator-Certified for CE credit for initial certification only and for the number of hours given by the provider.
- E) Add the following language to subdivision (1) of section 1399.354
 - (1) Preventative health services and health promotion, including tobacco and smoking cessation counseling.

Ms. Early brought up weekly medical staff conferences as a possible way to get the required CEs. She added, it seems like an RCP should be able to submit a certificate approved by the BRN according to the proposed added verbiage in 1399.351 on Approved Providers.

Ms. McKeever stated she has a problem with the suggested proposed language requiring a minimum of 10 CE hours be directly related to practitioner leadership (case management, or health care financial reimbursement, cost containment or management) as most respiratory practitioners have little to do with these areas of responsibility and they could be getting their CE credits in something that directly affects them.

Ms. Nunez explained the thought behind this addition came from the workforce study where it was brought up that leadership would be a way to open the minds of the profession.

Dr. Lewis stated this can be a starting point to throw out there and let the interested parties comment, suggest revisions, and after the Board would get to review it again.

Dr. Lewis moved to utilize the language as is for the purpose of submitting to interested parties and stakeholders.

Request for Public Comment:

Mike Madison, CSRC President, stated the CSRC is in favor of supporting a diversity in educational opportunities and stimulating the spread of those educational opportunities which is why the CSRC provides on-line training and live training as well as live interactive online. The American Lung Association often comes to the CSRC for CEU credits for their programs. There is ample opportunity for finding the educational requirements and the market is supporting the need. Once approved by the Board, the CSRC will review it line by line with further comments, but at this point the CSRC stands in favor of this initiative.

Wayne Walls, RCP Lakewood, CA thanked the Board for proposed language under Item 3 Continuing Education Required and for listening and including the idea to encourage meeting attendance from his presentation to the Board at the San Diego meeting.

Janet Fantazia, Instructor, Modesto Junior College, representing herself as well as 65 students from a leadership class she taught where the proposal was reviewed. She stated, the only concern they had was the face to face portion. She mentioned they are moving closer to online education. For example, the bachelors program will need to move towards online to be sustainable. She questioned if requiring face to face would be saying that the online course does not have the same value. She added online can be very educational with so many innovative technologies available to make online very versatile.

M/Lewis /S/Hardeman

In favor: Early, Franzoia, Hardeman, Kbushyan, Lewis, McKeever, Roth

MOTION PASSED

AB 2105, WORKFORCE DEVELOPMENT

Ms. Nunez reviewed the Workforce Development bill which is aimed at eliminating barriers to allow people to enter the practice of an allied health profession, including respiratory care, more easily. AB 2105 went into effect last year and charged the Department of Consumer Affairs with working to remove potential barriers to licensure. In response, DCA is exploring the possibility of an Earn and Learn model. However, the Board's current education statute (B&P 3740) requires attendance at a CoARC approved program, and currently CoARC standards will not allow for payment/reimbursement for clinical training. Ms. Nunez indicated that she is aware that a State union has reached out to CoARC to request that this standard be removed. However, Ms. Nunez pointed out that if you look at

the legislative support and opposition presented, you will see there are many things that may hurt the profession in the long run if payment for clinical education is allowed.

Patrick Le, Assistant Deputy Director of Board and Bureau Services, added the Department is working closely with board executive officers on AB 2105 and will be conducting a larger stakeholder process as required by the bill to ascertain a better grasp on the issue and determine a path forward. Brian Clifford is the Project Manager and looks forward to working with this Board and the Executive Officer, Ms. Nunez.

LEGISLATION OF INTEREST UPDATE

Ms. Molina reviewed the Legislation of Interest highlighting the following:

- Letter of support was sent for SB 769, the Baccalaureate degree pilot program which was looking to be extended. Currently, it is being held in the Assembly but that does not mean it is dead yet. Staff will continue to watch this bill.
- Letter of support was sent for SB 1003 which the RCB is co-sponsoring.

Ms. Molina reviewed the staff recommended positions listed below with the Board:

- SB 715: Department of Consumer Affairs: regulatory boards: removal of board members.
Status: Ordered to the Assembly Inactive File 9/14/17. May become a 2-year bill.
Board's Position: Watch
- SB 769: Baccalaureate Degree Pilot Program
Status: Held in Assembly Appropriations 9/1/17
Board's Position: Support
- SB 1003: Respiratory Care
Status: In Assembly Pending Referral 4/30/18
Board's Position: Support
- SB 984: State boards and commissions: representation: women
Status: Set to be heard by Senate Appropriations on 5/2/18
Board's Position: Watch
- SB 1137: Veterans: professional licensing benefits
Status: Set to be heard by Senate Appropriations on 5/7/18
Board's Position: Watch
- SB 1491: Healing arts: omnibus bill
Status: Re-referred to Senate Appropriations 4/23/18
Board's Position: Support
- AB 710: Cannabidiol
Status: Set to be heard by Senate Public Safety on 5/15/18
Board's Position: Watch
- AB 1793: Cannabis Conviction
Status: Set to be heard before Assembly Appropriations on 5/2/18
Board's Position: Watch
- AB 2138: Licensing boards: denial of application: criminal conviction
Status: Re-referred to Assembly Appropriations 4/24/18
Board's Position: Oppose
- AB 2409: Professions and vocations: occupational regulations
Status: Failed passage (with reconsideration) by Assembly Business and Professions 4/17/18
Board's Position: Oppose

AB 2483: Indemnification of public officers & employees: antitrust awards
Status: Ordered to Assembly Floor 4/26/18
Board's Position: Watch

Dr. Lewis moved to support SB 1491.

Request for Public Comment:

No public comment received.

M/Lewis /S/Goldstein

In favor: Early, Franzoia, Goldstein, Hardeman, Kbushyan, Lewis, McKeever, Wagner, Roth
Unanimous

MOTION PASSED

Dr Lewis moved to oppose AB 2138 and AB 2409.

Request for Public Comment:

No public comment received.

M/Lewis /S/Goldstein

In favor: Early, Franzoia, Goldstein, Hardeman, Kbushyan, Lewis, McKeever, Wagner, Roth
Unanimous

MOTION PASSED

STRATEGIC PLAN STATUS

President Roth stated the Board approved its Strategic Plan on October 15, 2017 and turned it over to Ms. Nunez to review the status for each objective.

Ms. Nunez reviewed as follows:

Goal 1: Enforcement

- (1) Seek regulatory amendment
Status: No updates at this time
- (2) Research the legalization of marijuana
Status: Presented to the Board at the February 2018 meeting. The Board found its laws and regulations did not require amendments, but it is something the Board will continue to watch as it might impact the Board's probation program and testing.
- (3) Seek Legislation to require an individual petitioning for reinstatement of licensure to pass the current licensing exam
Status: Proposed language currently in SB 1491
- (4) Recruit and train 2-5 additional subject matter experts to maintain investigative cycle times and ensure consistency
Status: No action to date
- (5) Create detailed disciplinary action summaries
Status; No action to date
- (6) Collect data related to discipline and educational institutions
Status: Information provided to members at this meeting
- (7) Increase the number of CE audits
Status: Board staff began auditing 10% of all renewals effective November 2017

- (8) Research and evaluate whether BreEZe can be modified to increase efficiencies in auditing licensees for CE compliance
Status: DCA is working on modifying BreEZe to automatically select candidates to be audited
- (9) Revise and strengthen contract language to require bodily fluid collection sites to be closer to a probationer's home or work
Status: Working on revising contract
- (10) Update disciplinary guidelines
Status: No action
- (11) Seek legislation to clarify once an applicant is placed on probation, they are subject to monthly probation monitoring costs
Status: Unsuccessful attempt to secure language in the 2018 legislative cycle was made
- (12) Eliminate the submission of a DMV history as application requirement
Status: The DMV history was no longer required effective 10/15/17

Goal 2: Education

- (1) Develop an action plan to establish laws and regulations or accrediting standards for student clinical requirements
Status: no action to date
- (2) Develop an action plan to incorporate a baccalaureate degree provision in the RCPA
Status: SB 1003 lays the foundation for identifying advance level tasks and services that will promote the development of baccalaureate programs.
- (3) Revise CE regulations to provide clarity and improve program effectiveness
Status: Proposed revisions present to the Board for considerations to circulate among stakeholders, prior to beginning the rulemaking process.
- (4) Develop brochures to be posted to Board's website and mailed to licensees to ensure awareness of CE requirements after revisions
Status: No action
- (5) Seek legislative authority to approve/disapprove a school based on clinical practice and/or exam pass/fail rates and/or accreditation status to ensure poor performing programs are not continuing to move unprepared student through their programs
Status: Partial information provided to the Board at this meeting.
- (6) Educate students pursuing RCP licensure about the consequences of having convictions and violations of the RCPA
Status: No action

President Roth added some action has been taken with the revision of the Ethics course

Goal 3: Practice Standards

- (1) Enforce the RCPA against facilities allowing unlicensed or unqualified personnel to perform respiratory care to cease unsafe practice and ensure patient safety
Status: President Roth, Vice president Wagner and staff are meeting with BVNPT on 5/23/18 to try to work together to resolve scope of practice concerns. Ms. Nunez added the Board is looking forward to meeting with them and building a foundation to work together. Ultimately, a joint statement would be the desired outcome.
- (2) Identify mechanisms in institutions to fully utilize the respiratory care scope of practice through an educational campaign to decrease costs.
Status: SB 1003 will lay foundation to notify all facilities of the full respiratory scope of practice and provide a meaningful guide on which services are basic, intermediate and advanced.
- (3) Increase communication with the Medical Board of California as it relates to standards of practice for MDs to fully utilize RCPs.

Status: In line with Practice Standard Objective #2. Ms. Nunez added she is frequently in communication with the Medical Board Executive Director.

- (4) Research and collaborate with other state agencies to potentially establish patient care ratios.

Status: Recently sent a letter to CDPH on the regulations.

Goal 4: Organizational Effectiveness

- (1) Establish a program to provide training to new board members in reviewing and applying the B&P Code.

Status: Ms. Nunez let Board members know staff will be reaching out to minimize confusion concerning required training

- (2) Establish regulations to distinguish documentation required to prove an honorable discharge.

Status: No action to codify in regulation to date, However, the Board currently requests verification in the form of a DD214.

- (3) Seek a legislative amendment to accurately reflect the name(s) of examinations for licensure to ensure clarity in the law

Status: Proposed language currently included in SB 1491

- (4) Develop a module within BreEZe to provide clarity and efficiency too Board members regarding case discipline,

Status: Enhancements to the BreEZe voting feature were established 1/11/2018

- (5) Update office equipment to promote efficient and effective execution of daily tasks and responsibilities.

Status: Completed. Desktops were replaced in early 2018.

- (6) Research the integration of BreEZe to a paperless application for licensure in order to improve customer satisfaction by improving processing times and reducing paperwork

Status: Board staff continue to continue to explore BreEZe's functionality to determine if it can be modified and if it would be beneficial to the Board.

Ms. Early requested that in the future, the Board just review items in progress and those not yet initiated as not to repeat items already completed.

President Roth emphasized one barrier removed by the Board is the expediting of applications for military and military spouses.

Request for Public Comment:

No public comment received.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Patrick Le, Assistant Deputy Director of Board and Bureau Services, introduced himself stating he will be supporting all the health care boards under DCA. He added he would like to present himself as a resource to the Board and if there is anything that he can do to help, he is happy to serve. He encouraged the Board to use him as a resource and added it has been a privilege to work with this Board and staff and learn about the incredible work done to protect California's patients and consumers.

President Roth praised the Board leadership and staff for all the great work gathering and presenting materials.

FUTURE AGENDA ITEMS

Dr. Lewis stated a future item he would like to see is Board members being more transparent with other Board members in BreEZe.

Ms. Nunez would like to have a training class for Form 700/conflict of interest. Possibly a 30-minute class before a future Board meeting.

President Roth would like to include any future developments concerning marijuana and DCA.

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CLOSED SESSION

The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 2:00 p.m. and reconvened into Public Session at 2:00 p.m.

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ADJOURNMENT

The Public Session Meeting was adjourned by President Roth at 2:30 p.m.

ALAN ROTH
President

STEPHANIE A. NUNEZ
Executive Officer