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5 **PUBLIC SESSION MINUTES**

6
7 **Friday, June 7, 2019**
8 **TELECONFERENCE**
9

10 **Teleconference Locations:**

11
12 **DCA Headquarters**
13 **North Market Hearing Room #102**
14 **1625 North Market, Sacramento, CA 95834**

15
16 **DCA DOI – Valencia Field Office**
17 **MBC Conference Room, Dist. 05**
18 **27202 Turnberry Lane, Suite 280**
19 **Valencia, CA 91355**

20
21 **Pima Medical Institute**
22 **111 Campus Way, Suite 100, Room 125**
23 **San Marcos, CA 92078**

24
25 **South San Francisco Grand Library**
26 **Grand Meeting Room**
27 **306 Walnut Avenue**
28 **South San Francisco, CA 94080**
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31 **Members Present:** Sherleen Bose (San Marcos)
32 Mary Ellen Early (Valencia)
33 Mark Goldstein (Sacramento)
34 Ricardo Guzman (Sacramento)
35 Michael Hardeman (South San Francisco)
36 Judy McKeever (South San Francisco)
37
38 **Staff Present:** Fred Chan-You, Legal Counsel (Sacramento)
39 Stephanie Nunez, Executive Officer (Sacramento)
40 Christine Molina, Staff Services Manager (Sacramento)
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1 **CALL TO ORDER**

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

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

7
8 **PUBLIC COMMENT**

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10 President Goldstein stated the Board encourages public comment as the issues being discussed
11 directly affect the profession and the RCP’s in attendance. He explained that public comment would
12 be allowed on agenda items, as those items are discussed by the Board during the meeting. He
13 added that under the Bagley-Keene Open Meeting Act, the Board may not take action on items raised
14 by public comment that are not on the Agenda, other than to decide whether to schedule that item for
15 a future meeting.
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19 **2. APPROVAL OF MARCH 1, 2019 MEETING MINUTES**

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

22
23 Request for Public Comment: No public comment was received.

24
25 M/Early /S/Guzman

26 In favor: Early, Goldstein, Guzman, Hardeman

27 Abstain: Bose, McKeever

28 MOTION PASSED
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31 **3. LEGISLATION**

32
33 Ms. Molina reviewed three additional bills that have been identified as legislation of interest following
34 the March 1, 2019 Board meeting.

35
36 **AB 613:** Professions and vocations: regulatory fees.

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

42
43 Staff Recommended Position: Watch

44
45 Request for Public Comment:
46

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

51
52 Mr. Guzman moved to take a Watch position on AB 613.

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2 M/Guzman /S/Early
3 In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever
4 MOTION PASSED
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7 **SB 53:** Open meetings
8 This bill would revise the Bagley-Keene Open Meeting Act regarding state body-created advisory
9 committees, by requiring two-member advisory committees to hold open and public comments if one
10 or more of the advisory committee members is a member of the larger board, committee, or
11 commission, and the advisory committee is supported either wholly or partially by state funds. The
12 purpose of this bill is to make the Bagley-Keene Act mirror provisions of the Ralph M. Brown Act,
13 which governs local governments' open meetings.
14

15 Staff Recommended Position: Oppose unless amended
16

17 Request for Public Comment: None received.
18

19 Mr. Guzman moved to oppose SB 53 unless amended.
20

21 M/Guzman /S/Bose
22 In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever
23 MOTION PASSED
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25

26 **HR 2508:** BREATHE Act
27 This bill is a 3-year pilot that would allow respiratory therapist to furnish disease management services
28 to Medicare beneficiaries with COPD. Its purpose is to demonstrate the value RTs bring to the health
29 care system and their patients through improved health outcomes and lower costs and to identify RTs
30 as telehealth practitioners in the Medicare statute.
31

32 Staff Recommended Position: Support
33

34 President Goldstein stated this is an important piece of legislation and asked for comments from the
35 board.
36

37 Ms. Early stated this piece of legislation is long overdue.
38

39 Ms. Bose stated she has seen that the profession is very supportive of this legislation.
40

41 Request for Public Comment:
42

43 Ms. McKeever moved to support HR 2508.
44

45 M/McKeever /S/Early
46 In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever
47 MOTION PASSED
48

49 Ms. Molina then provided an update regarding those bills for which the Board previously adopted
50 positions, as listed below:
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52
53

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

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20 Request for Public Comment: No public comment received.

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23 **4. PROPOSED REGULATORY LANGUAGE FOR APPROVAL: BASIC, INTERMEDIATE, AND**
24 **ADVANCED RESPIRATORY CARE**

25
26 Ms. Nunez stated the original Joint Statement between the Board of Vocational Nursing and
27 Psychiatric Technicians (BVNPT) and the Respiratory Care Board (RCB) was released in April 2019.
28 The statement was the product of over a year of work with input from legal counsel, experts from both
29 professions and staff from both boards. The main focus throughout the discussions was on long term
30 care and subacute facilities. While home care was ultimately included in the Joint Statement, the
31 Board understands that it is unique and has a different set of circumstances. She stated additional
32 work needs to be done in this area. While the Joint Statement still stands as written, because of the
33 way home care is set up, there appears to be a need for some type of exemption or certification
34 training for LVNs to perform some respiratory tasks in home care only. The proposed language was
35 based on communication prior to receiving much feedback from the home care industry. The
36 legislation passed last year, which this regulatory language is based on, allows the Board to define
37 basic, intermediate, and advanced tasks and creates an avenue to allow for public comment.
38 Currently, the language does not include or exclude home care. It has however picked up the
39 momentum that it is tied to home care. The Board would like to hear comments about why home care
40 needs to have LVNs participate in that care.

41
42 President Goldstein explained public comment will be opened up to each location starting with the
43 Sacramento audience.

44
45 **Request for Public Comment:**

46
47 There were numerous public comments received in support of carving out home care from the joint
48 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

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 Kwienzien, 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

1
2 President Goldstein thanked all those who provided comments. He stated the mandate of this Board
3 is public protection and reiterated that was the intent of the work that has been done on this language.
4 However, the Board recognizes there have been some valid comments provided. In response,
5 President Goldstein made a motion to exclude home care from this language and continue to work
6 with the BVNPT to modify the Joint Statement accordingly.
7

1 Mr. Chan-You asked for clarification if the motion was to direct staff to revise the proposed regulatory
2 language and include a homecare exemption. He stated, as it stands, this is just language staff has
3 brought before the Board for approval.
4

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

10
11 Ms. McKeever stated her interest in being a part of this work group.
12

13 Mr. Chan-You stated no action needs to be taken at this time because the Board is being asked to
14 approve the current language and the Board does not appear to be comfortable moving forward with
15 this language. It is possible for staff to come back at the next Board meeting with different language.
16

17 Ms. Early stated other issues were brought up besides home health care, such as LVN's
18 accompanying children to school and in congregate living facilities. These things also need to be
19 taken into consideration and included. She inquired if this would be considered a substitute motion.
20

21 Public Comment:

22
23 Erica Drury, Maxim Healthcare Services, requested the Board move to rescind the statement while
24 determining other options because it is currently active and has an effect on home health care.
25

26 McKeever stated that would have to be redefined along with the BVNPT.
27

28 Ms. Nunez added as this is a joint statement, it would be inappropriate for the RCB solely to rescind it.
29

30 Marianne Doral, legislative specialist, asked that the motion be clarified stating the audience is
31 unclear if the original motion has been modified.
32

33 Ms. Molina clarified the motion is to exclude home care from the language and continue to work with
34 the BVNPT to modify the Joint Statement.
35

36 M/Guzman/S/Bose

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

38 MOTION PASSED
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41 **5. PROPOSED REGULATORY LANGUAGE FOR APPROVAL: AMEND DISCIPLINARY**
42 **GUIDELINES, SUBSTANTIAL RELATIONSHIP CRITERIA (FOR LICENSEES), REHABILITATION**
43 **CRITERIA (FOR LICENSEES), DRIVING RECORD, AND HANDLING OF MILITARY**
44 **APPLICATIONS; ADD SUBSTANTIAL RELATIONSHIP CRITERIA FOR APPLICANTS AND**
45 **REHABILITATION CRITERIA FOR APPLICANTS (AB 2138); REPEAL SPONSORED EVENTS**
46 **PROVISIONS**
47

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

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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.

1 Mr. Guzman moved to approve the changes for AB 2138 as submitted by legal counsel in §1399.370,
2 §1399.372 and striking §1399.372.1 and grant staff the authority to make technical, non-substantive
3 changes.
4

5 Public comment: No comment received.
6

7 M/Guzman/S/Early
8 In favor: Bose, Early, Goldstein, Guzman, Hardeman, McKeever
9 MOTION PASSED
10

11 **6. FUTURE AGENDA ITEMS**

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14 No future agenda items were raised.
15

16 **Request for Public Comment:**

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18 No comments were received.
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21 **7. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA**

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23 No public comments were received.
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26 =====
27 **CLOSED SESSION**

28
29 The Board convened into Closed Session, as authorized by Government Code Section 11126c,
30 subdivision (3) at 12:25 p.m. and reconvened into Public Session at 12:32 p.m.
31 =====

32 33 34 35 **ADJOURNMENT**

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37 The Public Session Meeting was adjourned by President Goldstein at 12:32 p.m.
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47 _____
48 MARK GOLDSTEIN
President

46
47 _____
48 STEPHANIE A. NUNEZ
Executive Officer