PUBLIC SESSION MINUTES

Wednesday, June 30, 2021
PUBLIC WEBEX MEETING

Members Present:	Mary Ellen Early
	Mark Goldstein
	Ricardo Guzman
	Raymond Hernandez
	Sam Kbushyan
	Ronald Lewis
	Michael Terry
	Cheryl Williams
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 10:00 a.m. by President Guzman.

Ms. Molina called roll (present: Early, Goldstein, Guzman, Hernandez, Kbushyan, Lewis, Terry, Williams), and a quorum was established.

Mr. Kbushyan was present with a video connection but had audio difficulties connecting to the meeting.

1. PRESIDENT'S OPENING REMARKS

President Guzman asked the Board and staff to please turn their cell phones to silent. He added Board members may be accessing their laptops, phones or other devices during the meeting solely to access the Board meeting materials that are in electronic format. Individuals may be joining either online through WebEx or by telephone. Public comment would be allowed on each agenda items, as those items are discussed by the Board during the meeting. 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. If providing comment, it would be appreciated, but not required, to provide your name and organization represented, if applicable, prior to speaking. In order to allow the Board sufficient time to conduct its scheduled

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business, public comment may be limited. The Board welcomes public comment on any item on the agenda and it is the Board's intent to ask for public comment prior to the Board taking action on any agenda item.

The moderator explained the WebEx question and answer feature will be used to facilitate public comment when the Board president reaches a point in the agenda where public comment is appropriate. To make a public comment, click the Q & A icon at the bottom right corner of the screen. Type, "I would like to make a comment", in the "Ask" field on the lower right of the screen.

Request for public comment: No public comment was received.

2. BOARD MEMBER APPOINTMENTS

President Guzman explained the Board has two more appointments updates:

First, Michael Hardeman's appointment and hold over expired May 31, so he is no longer a member. President Guzman, speaking for all the members, thanked Mr. Hardeman for his incredible service to California citizens, his reliability, and the contributions he made as a Board member.

Second, President Guzman extended a warm welcome to the RCB's newest public member Cheryl Williams who is filling Rebecca Franzoia's vacancy.

3. APPROVAL OF MARCH 30, 2021 MEETING MINUTES

Dr. Lewis moved to approve the March 30, 2021 Public Session Minutes as written. The motion was seconded by Mr. Hernandez.

Request for public comment: No public comment was received.

M/Lewis /S/Hernandez
In favor: Early, Goldstein, Guzman, Hernandez, Lewis, Terry, Williams
Mr. Kbushyan was not available for vote due to technical difficulties.
MOTION PASSED

4. EXECUTIVE OFFICER'S REPORT

Ms. Nunez gave the Executive Officer's report on the following topics:

3a. COVID Impact Update

Ms. Nunez stated public restrictions were lifted June 15, 2021. The Waivers issued through Executive Order in connection with the State of Emergency are winding down:

- Authorization allowing board meetings to be held virtually will end on Sept 30, 2021.
- Authorization allowing Retired and Cancelled licensees to practice ends July 1, 2021.
- The CE waiver is still in place. Licensees with renewal expiration dates between March 31 2020 and July 31 2021 have until December 3 to complete required CE.
- Staff continue to telework and are also working back in the field for investigations and probation monitoring.

3b. Ethics Course Revisions for 2022

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Ms. Nunez stated the CSRC and AARC are hard at work on course revisions. Draft hard copies of the courses were submitted to the Board this month and the Professional Qualifications Committee has provided feedback. August 2, 2021 is the next target date for both the CSRC and AARC to have their draft courses available on line for review.

3c. Office of the Attorney General Budget Expenditures

Ms. Nunez stated at the last Board meeting she updated the Board on AG expenses and requests made for the Board to augment its budget with outside projections showing the Board would exceed its budget by $70,000. She added, the Board declined to do so and is pleased to report that projections now indicate the Board will under spend the FY 20/21 AG line item by roughly $20 to $30,000 dollars. She thanked Gloria Castro with the Office of the Attorney General and Liane Freels, Enforcement Manger for working together to find equitable resolutions to concerns expressed.

President Guzman asked if Board members had any comments.

Request for public comment: No public comment was received.

5. DISCUSSION AND POSSIBLE ACTION REGARDING APPROVAL OF THE MODIFIED TEXT OF THE BOARD'S PROPOSED RULEMAKING TO AMEND CALIFORNIA CODE OF REGULATIONS, TITLE 16 SECTIONS 1399.370 AND 1399.372 RELATING TO SUBSTATIAL RELATIONSHIP AND REHABILITATION CRITERIA REGULATIONS

Ms. Molina presented the AB 2138 rulemaking package related to substantial relationship and rehabilitation criteria to the Board to consider approval of additional modified text.

At its June 7, 2019 meeting, the Board approved regulatory language to implement AB 2138 (Chiu, Chapter 995, Statutes of 2018). The Board initially noticed the regulation proposal on May 29, 2020. Based on feedback from the Office of Administrative Law (OAL) and the Department of Consumer Affairs Legal Office, Modified Text was approved by the Board and was published on October 29, 2020 with no comments received. The final rulemaking package was filed with OAL on March 12, 2021. Additional feedback form OAL resulted in the publication of a Second Modified Text on May 17, 2021 which she presented to the Board for consideration. She added there were no comments received in response to the publication of the Second Modified Text. Under normal circumstances, the Board would have been presented with the additional amendments prior to publication. However, due to time constraints the second modified text was published with knowledge that consideration and action by the Board was to follow.

Ms. Molina stated a memorandum from Alex Millington, Regulatory Attorney with DCA's Regulations Unit is in your meeting materials. It clearly describes each proposed change, including whether or not the change was identified as substantive or non-substantive.

Ms. Molina thanked Mr. Millington for being exceptional in helping navigate this rulemaking file. She added he truly has gone above and beyond on the Board's behalf throughout this process – from always making himself available, to continually offering his expertise and assistance, and even reaching out to OAL on the Board's behalf as it attempts to chart the best course of action.

Dr. Lewis moved to adopt the second modifications to sections 1399.370 and 1399.372, and to take such steps necessary to promulgate the regulation in modified form.

M/Lewis /S/Goldstein
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Lewis, Terry, Williams
Mr. Kbushyan and Ms. Early were not available for vote due to technical difficulties.

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MOTION PASSED

President Guzman asked if Board members had any comments.

Request for public comment: No public comments were received.

6. PRESENTATION: INCORPORATION OF BACCALAUREATE DEGREE IN THE RESPIRATORY CARE PRACTICE ACT

(Professional Qualifications Committee, Raymond Hernandez and Michael Terry)

Mr. Kbushyan's and Ms. Early's technical difficulties were resolved, and they both participated fully into the meeting at 10:31 A.M and 11:07 A.M respectively.

President Guzman turned it over to the Professional Qualifications Committee, Raymond Hernandez and Michael Terry who put together a presentation, working through the examination of incorporating a baccalaureate Degree into the Respiratory Care Practice Act to ensure education requirements meet the demand of the respiratory care field.

Part 1: Historical Perspective for RCPS/ Current Landscape.

Mr. Hernandez indicated his presentation would address the current landscape of the profession at both the local/state level and nationally.

Currently there is a primary triad of bedside practitioners comprised of doctors (MDs), registered nurses (RNs) and respiratory therapists (RTs).

Discussion is aimed at how the RT profession can best serve consumers given the current state of healthcare.

President Guzman pointed out that he was grandfathered and has worked at the bedside since 1983. When comparing RT practice from then to now, it has grown and evolved tremendously. It appears we are at a place where the profession needs to "step it up."

Mr. Hernandez added that the RT profession needs to consider moving from its current respective tasks to taking on a more critical professional roll as a "physician extender" within the primary triad.

RNs have evolved. However, current degree requirements limit an autonomous roll for RTs outside of the acute care setting.

Ms. Nunez highlighted the growth within the Board itself over the last three decades, both administratively and in terms of the profession. (i.e. from grandfather to 1-year program to associate degree requirement and the increase from a minimum of a CRT to RRT in 2015).

Mr. Hernandez pointed out (and Ms. Nunez affirmed) that the Legislature would never support statutory changes that would legislate a current licensee out of their existing profession, and this must be carefully considered moving forward.

Mr. Terry pointed out that the Board's mission statement includes "supporting the development and education of respiratory care practitioners."
Mr. Hernandez pointed out that California has a high level of influence on the profession overall based its number of licensees, the highest in the nation.

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Mr. Hernandez also pointed out the AARC is recognized not only a leader for the respiratory care profession on a national level, but also worldwide. In fact, the AARC began discussions about the potential of a baccalaureate degree for respiratory care in 2008 (2015 and Beyond). It was also mentioned that the CSRC as a state affiliate works more independently with the RCB on professional issues impacting California.
2017 Strategic Plan Education Goal #2 “Develop and action plan to incorporate a baccalaureate degree provision in the Respiratory Care Practice Act (RCPA) to ensure education requirements meet the demand of the respiratory care field.”

This plan will help the Board to determine if a baccalaureate degree is needed for entry level for safe competent care.

Ms. Nunez reiterated the profession has grown dramatically to include high level functions such as ECMO and conscious/moderate sedation, requiring a specific expertise. These critical areas brought about discussions that there is currently so much content to be taught that the current 2-year associated degree programs cannot cover it all.

Mr. Hernandez stated that currently, RT programs teach skills for entry level into practice. However, the development of critical thinking comes after completion of the associate degree program. RTs need to be able to assess and make sound decisions at the bedside as “physician extenders” since they are often at the bedside 24/7 (along with RN’s).

AARC’s 2015 and Beyond was visionary and was addressed in 3 conferences/stages.

- Vision: where do we want to see his profession in 2015 and beyond
- Competencies: determined 202 different competencies that they assessed professionally were needed for a future practitioner
- Transition: how to get there – a roadmap

There was a need for data to support increased education. Most of the skill competencies identified are within the current programs. However, data gathering, assessment and recommendation of sound treatment plans along with “focused areas” is where there are gaps. Focused areas are needed now more than ever (i.e. ECMO, PFT, etc.).

Mr. Terry indicated one of his program’s challenges is getting good experience for students in the Pediatric and Neonatal settings. Associate degree graduates have very little experience and are generally taught this after graduation.

Mr. Hernandez responded that in Northern California, workforce needs are often met by “travelers” because our own constituencies cannot meet the current needs in certain areas. We have enough people, just not enough “trained” people to meet patient needs.

Ms. Williams expressed concern with different degrees of respiratory therapy. She indicated that if we lump everyone in one category, we may miss something. She also expressed that there is an overall need for individuals to enter the medical field in California, but if a baccalaureate degree isn’t need for certain areas of practice, the Board shouldn’t stress it. Ms. Williams also acknowledged that a higher level of practice may possibly warrant baccalaureate degree but is concerned that overall healthcare has gotten away from “training” for certain levels of practice. Consideration must be given to the level of practice when higher education is needed. Not all practitioners will perform high level functions. Ms. Williams stated she personally has respiratory problems and children with respiratory issues as well, so she has seen RTs in action and is not convinced they all need a baccalaureate degree level of education. She just wants to ensure this is all taken into consideration to determine how to separate these levels out.

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Mr. Hernandez responded that we are prepared to engage in these conversations, because there are different models into how to do a stepwise approach. For example, New York implemented a tiered system so there could be progressions. Other places have a timing of Part 1 to Part 2 to allow individuals to get into the workforce earlier. Some have “plus” systems and the Nursing Case Study will provide these examples. Mr. Hernandez agrees it is not an “all or nothing” and that’s why we are conducting theses study sessions.

Dr. Lewis stated the respiratory field has become more sophisticated and practitioners need to be more well-versed and have increased in many areas of respiratory care. He supports getting people into practice earlier, but with the complexities of the field he would not want to lessen the importance by having a different category for those who may not be operating doing pediatric vents, for example. He gave a comparison to physician’s training -- he is not a pediatrician but was still required to do a pediatric rotation. Mr. Hernandez responded stating NY did away with their tier system for that very reason.

Speaking to what Ms. Williams mentioned earlier, Ms. Nunez pointed out the climate of the legislature and its ongoing support for an “earn and learn” trend. However, the Board does have a statue allowing it to define basic, intermediate, and advanced tasks, services, and procedures. It may be necessary to further define these levels moving forward.

President Guzman received 6 months didactic training and as working as a night shift RT after 11 months, though he acknowledges he was not well prepared for the role. For this reason, he was somewhat relieved when the Board moved to a minimum associate degree requirement years ago. President Guzman has been in the education arena for 21 years and has witnessed firsthand the challenges of preparing students to graduate at an accelerated level in a period of 18 months. He always felt like they were racing against a clock to teach as much as they could and ensure these students could practice safely in accordance with the Board’s mandate. Now he is a program director at a traditional 2-year program, and they work hard to prepare students to take care of very critically ill patients. The technology in our profession has tremendously advanced and what the students need to know cannot be taught in 2 years. This is what he does in addition to practice at the bedside. Acknowledges there are many facets – including the fact that hospitals are business and frequently consider costs – but we need to protect our profession because we are the best individuals in the hospital to do certain things and we need to be seen as equals on the healthcare team and respected for our expertise and in step with other advancing professions.

Michael Terry added as a former manager of an adult intensive care service, he had about 100 employees under his care and it was very difficult when he had multiple levels of competency to match that with workforce needs. Managers appreciate a better prepared licensee as it makes it difficult when an employee is not prepared in certain areas and it ties the managers hands in patient assignments. Though a tiered system may need to be considered moving forward, the simplicity of having a workforce that is deployable into the situations for which they are needed also needs to be an aspect of our decision.

Mr. Goldstein stated the AARC and NBRC are currently working on the development of an Advanced Practice level exam. He also asked that that the Board considered the great expense hospitals must undertake to recertify competencies in these advance practitioner level skills. It is very difficult even within the current workforce to change facilities without recertifying sometimes even in areas as simple as blood gas draws.

Mr. Hernandez pointed out that the finding from the UCSF study reflected that from both an education and employer perspective, new graduates still need significant training to enter the workforce and provide competent care.

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Both AARC and CSRC have updated their position statements in alignment with the requirement of a baccalaureate level degree by 2030.

As of January 2018, CoARC is no longer accrediting NEW associate degree level programs. Current associate degree programs can be reaccredited so long their accreditation status does not lapse. The various professional organizations are all leaning toward a higher-level degree.

Do we need another workforce study? The Professional Qualifications Committee recommends the Board complete these study sessions before making a decision regarding another workforce study, in part to determine what information the Board would be seeking.

What is happening across the United States? Currently all states require a minimum of an associate degree. NY is proposing legislation (bill number 1358) to require a minimum of a baccalaureate degree for entry-level practice. Remember, NY was one of the few states to have a tiered level system at the technician and therapist levels, but as Mr. Terry pointed out earlier, from the employer perspective it created too much confusion, and the lower level practitioners had very few opportunities because the skills and abilities needed had become so complex the minimum competency at the technician level did not meet the workforce needs. This is currently being seen in the profession now. Mr. Hernandez stated, anecdotally if an employer has two potential candidates, one with an associate degree and the other with a baccalaureate degree (with other areas of consideration equal), the person with the higher-level degree is the person most preferred. Some employers have already established the baccalaureate degree as preferred or as the minimum requirement for certain classifications and settings.

State licensure is required in 48 states, and 6 states now require RRT minimum with 3 more states pursuing the RRT level as the minimum for licensure.

Other external pressures related to increasing education requirements:

- Improved patient safety outcomes
- Magnet status – this is something offered by RN organizations which is now being adopted by many hospitals. Magnet status requires a percentage of nurses to have a baccalaureate level degree.
- RTs remain classified as “technicians” and the baccalaureate degree would move them into a “professional” category.
- More independent roles and responsibility including outside of the acute care setting with a higher-level degree requirement (i.e. Case Manager, ECMO Specialist, Educator, Researcher).

Current educational pathways into entry-level practice can be at the associate, baccalaureate, or master’s degree level. Loma Linda University is the only entry into practice baccalaureate degree program. Skyline College and Modesto Junior College each offer a 2+2 bachelor’s program as part of the State’s community college baccalaureate degree pilot program. There are a few other baccalaureate opportunities available via online education.

Nationally there is also a degree advancement opportunity for individuals with an existing degree who are looking to advance to a higher degree level. Finally, there is an Advance Practice opportunity for those who possess a baccalaureate degree and who are licensed by the state, have a year of clinical experience, and possess an RRT credential.
President Guzman shared that as he stated before he was a 1-year CRT grad and at that time an RRT credentialed individual was specific for someone with a 2-year education. Discussion about the RRT as a minimum requirement started in 1985 and took until 2015 to be implemented primarily because of concerns with how the current workforce would be impacted by an increased credential requirement. Interestingly, by the time the RRT became required in 2015, employers had already

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implemented the higher-level credential as a minimum employment requirement reflecting what the workforce was demanding. President Guzman stated we are seeing a similar trend as relates to the BSRT, and added that when he was affiliated with a Southern California respiratory program he worked with about 20 different healthcare facilities and in his conversations with the numerous respiratory managers/directors it became clear that at least a baccalaureate degree is needed to oversee a respiratory department.

President Guzman added that has worked alongside nurses for 37 years and with the professional moving toward magna status and being alongside them in critical care it is really easy to see the strength the BSN nurses possess. It is clear their advanced education has better prepared them, and I am hopeful it will be the same for RTs should we move toward the baccalaureate degree, so our healthcare colleagues recognize RTs as partners at the advanced level.

Request for public comment:

Mary Adorno, Legislative Specialist for the California Association for Health Services, appreciates the advanced opportunity for the RT field to move to an entry-level baccalaureate degree. Ms. Adorno has an extensive legislative history and is commenting on behalf of students throughout California looking for certification and registration programs that do not require degrees. She indicated it is important that we recognize that other healthcare professions maintained entry-level positions and she encouraged the Board to find a way to maintain a certification or registration in place to assist advanced practitioners while also recognizing the need for a baccalaureate degree for advanced areas of practice. She also stated the work the Board is doing in honorable and she looks forward to working with the Board in the future on this issue.

Michael Madison, RCP and member of CSRC and AARC has been practicing respiratory care for 35 years and started “on the job training” in North Carolina and achieved a bachelor’s degree before he entered the respiratory profession. He stated without a degree he would have been at a great loss in participating in the many roles he has held in the respiratory field and his interaction with other members of the healthcare team on issues related to healthcare quality improvement. The equipment and the physiology an operator needs to understand has become far more complex, and as the respiratory care field moves into the electronic world of medicine, a broader and deeper education in lung physiology is going to be very important to make RCPs successful in the future.

President Guzman’s connection to the meeting was lost temporarily at 11:21 but returned immediately.

The meeting was paused for a break at 11:52 and resumed at 12:00.

Part 2: Case Study Nursing

Before Mr. Terry began his presentation, Mr. Hernandez addressed Dr. Lewis’s question regarding salary differences for RCPs. Mr. Hernandez stated that anecdotally, there is not really a differentiation for “entry into practice.” However, pay differentials are more often seen within position classification levels i.e. RCP I, RCP II, RCP III, etc). Michael Terry added that he is aware that many facilities have clinical ladders that require higher level requirements such as a higher level of education to qualify for certain positions and/or position levels.

Ms. Williams commented that a CNA does not make as much as an LVN, and an LVN does not make as much as an RN. She suggested that if tiers were structured like that it may be more appeasing to everyone. President Guzman stated that the example Ms. Williams provided makes sense in the nursing setting because the roles of each type of “nurse” are very different – what a CNA is authorized to is vastly different than what is authorized within the RN scope of practice. In respiratory care that is not the same because you will find RTs at the bedside with an associate degree, and RTs at the bedside with baccalaureate degrees yet their roles are the same. In some cases, those with higher

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levels of education advance into positions of lead, supervisor or manager. Ms. Williams asked if there was a means of utilizing different levels of staff for different levels of care/procedures. In response, Mr. Hernandez stated the current workforce study addresses how those scenarios can constrain the employer and encouraged all members to read the workforce study completely to help future discussions regarding this issue.

Mr. Terry presented the Board with Case Study #1 related to Nursing. He acknowledged that while the incorporating of a baccalaureate degree may or may not end up being the path the Board pursues; these studies will provide a means of sharing how kindred fields have navigated increased educational requirements as part of licensure.

Mr. Terry provided an overview of how the nursing program evolved from on the job training in the 1800's to formal education programs in the 1900's. Once academic courses were put into place, hospital-based training became obsolete.

Some highlights about the BRN and its history:

- 1913 -- Board of Registered Nursing was established
- 1939 -- Nursing Practice Act was established, and the governor appointed five RN members to oversee the practice.
- 1978 -- continuing education became required.
- 1982 -- BRN adopted the NLCEX test as its licensure exam.
- 1990 -- fingerprint requirements were established.
- 1994 -- cost recovery program was implemented
- 1996 -- citation and fine program was implemented.

Advanced practice in nursing was identified and addressed by the California legislature as follows:

- 1975 – certification of nurse midwife
- 1978 – certification of nurse practitioners
- 1984 – nurse anesthetist practice established
- 1985 – registration of psychiatric/mental health nurses established
- 1998 – certification of clinical nurse specialist established

As early as 1982 a position statement was released by the National League in Nursing calling for BSN as the minimum educational requirement. In 2010, the Institute of Medicine studied what it thought what the future of nursing should be and recommended all nurses attain higher levels of education. This study's findings included recommendations that nurses should achieve higher levels of education and training through an improved education system and promotes seamless academic progressions, and an increase in the proportion of nurses with a baccalaureate degree to 80 percent by 2020. These recommendations came in part as a means of addressing patient care needs stemming from the Affordable Care Act.

Mr. Terry shared the findings of a cross-sectional "associational research" study which included 36 US hospitals wherein it was determined that in hospitals with more nurses who have a baccalaureate degree, there are better outcomes for patients after cardiac arrest.
Mr. Terry next shared the findings of another cross-sectional study which researched the educational levels of hospital nurses and surgical patient mortality. Patient mortality rates were improved by a number of factors including nursing education levels, staffing levels, and higher levels of nurse experience.

Overall, there was a statistically significant relationship between the proportion of nurses in a hospital with bachelor's and master's degrees and the risks of both mortality and failure to rescue, both before and after controlling for other hospital and patient characteristics.

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Moreover, each 10% increase in the proportion of nurses with higher degrees decreased the risk of mortality and of failure to rescue by a factor of 0.95%, or by 5% after controlling for patient and hospital characteristics. In summary, these two studies demonstrate patient outcomes when we have better educated nurses.

Mr. Terry shared that currently in the State of New York, RNs are required to obtain at least a BSN within 10 years of their initial licensure to continue practicing. There is pending legislation in New Jersey and Rhode Island proposing the same concept of a 10-year requirement and appears to be catching on nationwide.

Mr. Terry also shared that in 1987, North Dakota attempted to make the BSN the minimum requirement for licensure but was forced to scrap the issue due to a nursing shortage.

Mr. Hernandez mentioned that Mr. Terry tried to obtain information on the BRN's current stance as it relates to a BSN minimum requirement in California, however there is no indication of this type of effort mentioned on its website. Mr. Terry indicated he has had discussions with nursing educators at his university and they are part of an effort to bring that to the Legislature.

Mr. Hernandez asked if it is appropriate for Stephanie Nunez to reach out to the BRN Executive Officer to determine if the BRN is having any conversations in this area. Ms. Nunez agreed to contact the BRN and report back to the committee.

In closing Mr. Hernandez thanked Mr. Terry for his presentation and thanks the Board and the public for its input as the committee moves forward. The feedback received will be very helpful.

Future discussions will include how increased education will impact the entry pathway for citizens to become RTs and determining if there is an opportunity for individuals to continue entering the practice at the associate degree level while also pursuing a baccalaureate degree option. We will also discuss the role of the respiratory care practitioner, the complexity of the respiratory care practitioner, and whether there is feasibility to create a tiered structure within that.

In terms of employment the Board sets the regulatory standards. However, how those standards are put into practice is the responsibility of the employers. Mr. Hernandez asked if it is appropriate to invite an employer's perspective and a practitioner's perspective as part as future discussions? The Board agreed with and supported this suggestion.

President Guzman suggested asking someone from the nursing profession to provide his or her perspective. Mr. Hernandez suggested a nursing manager who may be part of a magnet organization and who can speak to patient outcomes.

President Guzman stated he currently works for North Bay Healthcare in Fairfield. North Bay gained magnet status last year and President Guzman offered to speak with nursing representatives at the facility to inquire if they would be willing to share their perspective.

Mr. Hernandez pointed out that moving forward it is very important that the Board understands the minimum education requirements for RTs. Currently, although entry into practice requires completion of a "2-year program," the reality is the student prepares for 3+ years in their educational journey. From a community college perspective, each RT student accumulates 100 units by the time they graduate with an associate in science in respiratory care (a bachelor's degree requires 120 units).

Dr. Lewis pointed out that the Medical Board also recently increased its post-graduate training for MDs from 1 to 3 years due to advanced complexities.

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President Guzman thanked both Mr. Hernandez and Mr. Terry for their excellent work and for their hard work preparing their presentations.

Request for public comment: No public comment was received.

7. DISCIPLINARY PROCESS OVERVIEW PRESENTATION

(Gloria L. Castro, Assistant Attorney General and Christine A. Rhee, Deputy Attorney General)

President Guzman introduced Senior Assistant Attorney General Gloria Castro and DAG Christine Rhee from the California Office of the Attorney General to present an overview of the Disciplinary Process.

Ms. Castro leads the Health Quality Enforcement Section in the California Department of Justice, Attorney General's Office. The section prosecutes professional licensing and disciplinary cases against licensees on behalf of state health care oversight agencies, including the Medical Board of California. Ms. Castro joined the Attorney General's Office Civil Rights Enforcement Section in 1999. In 2005, she joined the Health Quality Enforcement Section. She was promoted to Supervising Deputy Attorney General in December 2010. Attorney General Kamala Harris appointed her as the Senior Assistant Attorney General of the Health Quality Enforcement Section in March 2013. Ms. Castro received her juris doctor from the University of Southern California Law School in 1997, and graduated from the University of California, Santa Barbara, in 1994.

Ms. Christine Rhee has been with the Department of Justice in the Health Quality Enforcement section since 2015 and the Respiratory Care Board office liaison since 2017. At HQE, she has litigated more than 200 cases in administrative, state, and federal court, and represented the various HQE boards in approximately 30 hearings. Christine is currently a member of the California, District of Columbia, and Florida state bars. Prior to working at the AG's office, Christine was a criminal prosecutor at the Miami-Dade State Attorney's Office from 2011 through 2015. As an Assistant State Attorney, Christine worked in the misdemeanor domestic violence, juvenile, and felony divisions before being selected to work in the Economic Crimes unit. There, Christine worked on white collar crime investigations and prosecuted high profile cases involving schemes to default and theft in excess of $100,000. Christine received her law degree from American University Washington College of Law in 2011 and her undergraduate degree from Cornell University in 2005.

President Guzman stated the RCB is pleased to have both attorneys here today to provide an overview of the Disciplinary Process which will be a great introduction or review for both new and seasoned members to help the Board understand how a complaint is investigated, reviewed and adjudicated prior to Board members receiving a decision for their vote.

Ms. Rhee presented an overview of the Disciplinary Process.

President Guzman asked if Board members had any comments.

Dr. Lewis stated it is difficult to define the standard of care. He inquired, if geography is part of the equation when you say, “in similar circumstances?” Ms. Castro responded, in short, it is that level of skill, knowledge and care and the treatment ordinarily possessed and exercised by other reasonably prudent respiratory care therapists in the same or similar circumstances in question. The standard of care is owed to patients no matter where they are in the State of California.

President Guzman asked how much weight the expert witness has in the eventual resolution of a case? Ms. Rhee responded the ALJ is the ultimate determiner of the credibility of all witnesses that testify before him or her. That expert witness testimony is weighed just as equally as any other witness that testifies in front of him or her. It is up to the ALJ to make that determination.

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Ms. Nunez clarified, if the Board non-adopts an ALJ decision, they can increase the cost pursuant to 3753.5, and Ms. Rhee confirmed.

Ms. Nunez thanked both Ms. Castro and Ms. Rhee for always being available for the Board and for the great job they do. Ms. Castro thanked Ms. Nunez and her staff for being among the most efficient and hardworking staff members they deal with daily. She added the staff at the Attorney General's Office are very much devoted to advancing the Board interests and enforcing the laws against, or for, or on behalf of advancing those same laws and regulations to interpret things differently for you licensees.

Request for public comment: No public comment was received.

President Guzman thanked both Ms. Castro and Ms. Rhee for the excellent presentation.

8. LEGISLATION OF INTEREST

Ms. Molina provided an update and review of the legislation of interest that has been identified for 2021. The meeting materials include updates on the bills for which the Board previously adopted positions. She highlighted a few specific bills, including those mentioned in the item summary:

AB 107 (Salas) DCA: boards: temporary licenses: military spouses / SRP: Watch

At the March 3, 2021 meeting, the Board took an oppose unless amended position on AB 107 aimed at requiring most boards and bureaus within the Department to issue temporary licenses to military spouses meeting specified criteria. Following the meeting, the Board's concerns were communicated to the author's office. Confirmation was received that the bill includes an exemption for boards, such as the RCB, that have an existing expedited process in place for military applicants. She added. based on this exemption, the Board may wish to consider changing its position to Watch.

The exemption states:
(i) (A) This section shall not apply to a board that has a process in place by which an out-of-state licensed applicant in good standing who is married to, or in a domestic partnership or other legal union with, an active duty member of the Armed Forced of the United States is able to receive expedited, temporary authorization to practice while meeting state-specific requirements for a period of at least one year.

Ms. Early moved to change positions from "Oppose Unless Amended" to "Watch" on AB 107. President Guzman asked if Board members had any comments.

Request for public comment: No public comment was received.

M/Early /S/Lewis
In favor: Early, Guzman, Hernandez, Lewis, Terry, Williams
Mr. Kbushyan and Mr. Goldstein were not available for vote due to technical difficulties.
MOTION PASSED

AB 562 (Low) Frontline COVID-19 Provider Mental Health Resiliency Act of 2021; health care providers; mental health services: Watch

Ms. Molina presented AB 562 to the Board for consideration. This bill would require the Department of Consumer Affairs, in coordination with the relevant healing arts boards, to provide mental health services to licensed health care providers who have provided care to COVID-19 patients. Relevant

DRAFT

healing arts boards would have to notify their licensees and solicit applications for access to the program.

She added, while the policy intent of the bill is commendable, there seems to be a consensus that it falls outside the boundaries of the Board's consumer protection mandate which specifies, “Protection of the public shall be the highest priority for the Respiratory Care Board of California in exercising its licensing, regulatory, and disciplinary functions. Whenever the protection of the public is inconsistent with other interests sought to be promoted, the protection of the public shall be paramount." [Reference Business and Professions Code section 3710.1.] Additionally, there are significant concerns related to who will be responsible for funding this mental health program for licensees. In calculating some quick numbers, it is clear these costs to fund a mental health program for even just a small percentage of licensees could prove to be astronomical and not absorbable for a board such as the RCB, who less than a year ago implemented the final of a 4-step renewal fee increase. She added, there was some relief after reading the Assembly B&P Committee Analysis wherein the author’s staff (author: Assemblyman Low) acknowledged potential funding issues and committed to ensuring fee increases are not triggered or he would consider amending the bill to narrow the scope of services. The provisions seeking the assistance of notifying licensees of available programs is more attainable. But even then, depending upon the number of licensees who apply this too may result in the need for additional staff and resources.

Also taken into consideration is that many licensed RCPs are employed in a full-time capacity and should have their own medical insurance benefits. Even those who may not, are required to maintain healthcare coverage available through other outlets such as Covered California. These seem to be the more appropriate entities to address mental health issues derived from serving on the COVID-19 front lines. While the Board has recognized, applauded, and supported the hard work and life-saving care that has been provided by all healthcare heroes throughout the COVID-19 pandemic, support of AB 562 as written would be contrary to the RCB's consumer protection mandate and fiscally impossible to fund as written.

She concluded, although the meeting materials include a staff recommended position of Watch primarily because the author has acknowledged potential funding issues and has committed to amending the bill because of this issue, she would like the Board to weigh-in to decide how best to proceed regarding AB 562.

Ms. Early moved to approve the staff recommended position of Watch for AB 562.

President Guzman asked if Board members had any comment. Dr. Lewis inquired what political fallout might the Board incur if the Board opposes. Ms. Molina responded she believes there is significant rationale to justify that as well as the whole cost issue, but the staff recommendation remains a watch position.

Request for public comment: No public comment was received.

M/Early /S/Terry
In favor: Early, Goldstein, Guzman, Hernandez, Lewis, Terry, Williams
Mr. Kbushyan was not available for vote due to technical difficulties
MOTION PASSED

<u>AB 619 (Calderon) Lung Health / SRP: Support</u>

Ms. Molina stated the Board is in support of AB 619 related to lung health. During recent amendments, the provisions specific to COPD awareness were removed to reduce the overall costs associated with the bill. However, the bill continues to focus on protecting lung health during wildfires

DRAFT

by requiring counties to include lung health information to the public in their wildfire emergency plans and remains quite positive for respiratory care consumers.

AB 927 (Medina) Community Colleges: statewide baccalaureate degree program: Support

Ms. Molina stated the Board is being asked to ratify the support position for AB 927 as approved by the Executive Committee after the March 3, 2021 meeting. This bill extends the operation of the statewide baccalaureate degree pilot program indefinitely and allows for 30 baccalaureate degree programs per year versus the prior maximum of 15. This is key to respiratory care education since Modesto Junior College and Skyline College are among the community colleges currently offering bachelor's degrees as part of the pilot program.

Ms. Early moved to ratify the Executive Committee's interim position of support on AB 927.

President Guzman asked if Board members had any comment.

Request for public comment: No public comment was received

M/Early /S/Lewis
In favor: Early, Goldstein, Guzman, Hernandez, Lewis, Terry, Williams
Mr. Kbushyan was not available for vote due to technical difficulties
MOTION PASSED

AB 1105 (Rodriguez) Hospital workers: COVID-19 TESTING / SRP: Watch
Ms. Molina stated AB 1105 being watched and remains related to:

- supplying personal protective equipment to an employee, regardless of whether or not the employee has received a vaccination for COVID-19.
- requiring an employer of workers in a general acute care hospital to develop and implement a program to offer weekly COVID-19 screening testing for health care personnel, as defined.
- require an employer to develop a COVID-19 mitigation and testing plan.
- require an employer to test all patients for COVID-19 prior to admission to the hospital and to monitor all patients during their hospital stay for the development of COVID-19 symptoms.

Ms. Molina added this bill has been amended to impose these requirements only until 1/1/25.

Request for public comment: Michael Madison, RCP and member of CSRC spoke on behalf of the CSRC concerning AB 1273. He stated the CSRC is taking an opposed unless amended position. It would prevent any board from accepting or prohibiting payment to students during clinical rounds. Specifically how it affects respiratory therapist in California is that the Commission of Accreditation for Respiratory Care (CoARC) forbids payment of respiratory therapy students that are partaking of clinical rotations at hospitals. If it became a requirement to pay the students, the hospitals would likely drop clinical sites and be forced to pass the expense on to the schools. This would negatively impact respiratory care students in California. The CSRC is working with a coalition to try and get that amended. He concluded, the CSRC respectfully requests that the Respiratory Care Board look at this bill for a possible position.

Ms. Molina responded the Board will review AB 1273 and, if necessary, will work with the Executive Committee pursuant to the Board's policy, allowing for a position in-between scheduled meetings.

9. BOARD MEMBER DATE(S) AND LOGISTICS

The next Board meeting will be an in-person meeting and held in Sacramento on October 20, 2021.

DRAFT

Public comment: No public comment was received.

10. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Public comment: No public comment was received.

11. FUTURE AGENDA ITEMS

Mr. Hernandez reiterated the Professional Qualifications Committee will be presenting Part 2 of its Study Session. President Guzman asked for some guidelines to get nursing representative. Mr. Hernandez stated he will work with the Executive Officer.

Ms. Nunez added future agenda items include a draft of the Sunset Report and the ethics course review and approval.

Public comment: No public comment was received.

ADJOURNMENT

The Public Session Meeting was adjourned by President Guzman at 1:40 p.m.

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RICARDO GUZMAN	STEPHANIE A. NUNEZ
President	Executive Officer

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