



PUBLIC SESSION MINUTES

Friday, February 5, 2010

**State Capitol
Room #112
10th & L Streets
Sacramento, CA 95814**

Members Present: Larry L. Renner, BS, RCP, RRT, RPFT, President
Barbara M. Stenson, RCP, RRT
Lupe V. Aguilera
Murray Olson, RCP
Sandra Magaña
Richard L. Sheldon, M.D.
Charles B. Spearman, MSED, RCP, RRT

Staff Present: Dianne Dobbs, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager
Liane Freels, Staff Services Manager
Paula Velasquez, Staff Services Analyst

CALL TO ORDER

The Public Session was called to order at 9:58 a.m. by President Renner. A quorum was present.

APPROVAL OF NOVEMBER 13, 2009 PUBLIC SESSION MINUTES

Dr. Sheldon moved to approve the November 13, 2009, Public Session minutes as written.

M/ Sheldon /S/Magaña

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

DIRECTOR'S REPORT

(Kim Kirchmeyer, Deputy Director for Board and Bureau Relations)

Scott Reid, Cabinet Secretary, honored Ms. Nunez, on behalf of the Governor, for her commitment to the Board, Department of Consumer Affairs and the Administration. Mr. Reid thanked Ms. Nunez for her assistance to the Director and for coordinating and leading the other boards in putting together an Enforcement Program the Department can be proud of.

Brian Stiger, Director of the Department of Consumer Affairs, stated the Consumer Protection Enforcement Initiative (CPEI) is possibly the most important work the Department has done in 30 years. He thanked Ms. Nunez for doing an outstanding job on this project and presented her with a plaque.

Kim Kirchmeyer, DCA's Deputy Director, also thanked Ms. Nunez for her energy and excitement for the CPEI project. Ms. Kirchmeyer, speaking on behalf of the Director, reviewed the CPEI stating the length of time it takes to investigate and prosecute a violation of law has come under scrutiny lately. The issues at the Board of Registered Nursing pointed out systemic problems in the Enforcement process for most of the Healing Arts Boards. The Department developed the Consumer Protection Enforcement Initiative (CPEI) to address the problems in an effort to improve enforcement processing and reduce the time it takes to prosecute violations from 3 years (for some boards) down to 12-18 months. The initiative focuses on three main areas:

- 1) Administrative Improvements
 - Develop best practices for the boards.
 - Hire a Deputy Director for enforcement and compliance to review and monitor all board enforcement programs.
 - Establish performance measures with other state agencies.
- 2) Staffing and IT Resources
 - Increase staffing for most of the boards which is expected to move some of the workload from a sworn investigator and put it on a desk investigator.
 - Replace the CAS system, an archaic system that has been in use for more than 20 years and doesn't provide the data that the boards need. The new system would apply to enforcement and licensing and is expected to be implemented by December 2012.
- 3) Legislative Changes
 - Look to where improvements can be made to help the boards get the resources that they need.

SB 1441: UNIFORM STANDARDS

(Kim Kirchmeyer, Deputy Director for Board and Bureau Relations)

Ms. Kirchmeyer reviewed Senate Bill 1441, the substance abuse guidelines, from the Department's stance. SB 1441 contains 16 standards that are intended to protect the public against substance abusing health care practitioners. The current status of the proposal is that it

has been adopted by the board's executive officers who were all part of the Substance Abuse Coordination Committee. The Legal Office is in the process of reviewing the standards as some of them require legislation, some require regulatory changes and others can be implemented immediately.

DCA is asking the Board for the following:

- 1) Support new legislation that may be required for implementation of these new guidelines.
- 2) Have regulations put into place. Ms Kirchmeyer stated that at the next meeting, the Department would like to have a proposal before the Board to begin the process to implement regulations, as needed, to support the guidelines.
- 3) Place an item on future agendas that follows up with the guidelines each meeting to make sure they are being implemented to the best of the ability of the Board.
- 4) Authorize the Executive Officer to implement what she can now without regulatory and/or legislative changes.

SB 139: HEALTHCARE WORKFORCE DATA

(Kim Kirchmeyer, Deputy Director for Board and Bureau Relations)

SB 139, effective January 1, 2008, charged the Office of Statewide Health Planning and Development (OSHPD) with establishing a healthcare workforce clearinghouse. The data gathered will be used to identify education and employment trends in the health care professions and determine supply and demand for health care workers. The specifics regarding gathering data from the licensees is currently in development. One possible idea is to include a form that has the data that OSHPD needs with all licensing renewal applications. The Director's office has asked the Board for support to work with the Department and OSHPD to obtain the information needed for this project.

Ms. Kirchmeyer addressed questions from the Board.

Ms. Magaña moved to authorize the Executive Officer to implement any enforcement issues that can be addressed immediately as it relates to the Enforcement Initiative and SB 1441

M/ Magana /S/Sheldon

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
MOTION PASSED

Ms. Magaña moved to allow the Executive Officer to work in cooperation with the Department and OSHPD to obtain the data necessary to build a healthcare clearinghouse.

M/ Magana /S/Stenson

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
MOTION PASSED

EXECUTIVE OFFICER'S REPORT

RCP/RRT/CRT STATISTICS

(Stephanie Nunez, Executive Officer)

Ms. Nunez outlined the data showing the number of California licensed RCPs who possess RRT credentials increased from 30% to nearly 34% in the past year.

Dr. Sheldon suggested suspending the collection of this data due to the amount of time required to track and report against the usefulness of the data to the Board. President Renner agreed.

ETHICS COURSE UPDATE
(Stephanie Nunez, Executive Officer)

As a follow up to the last meeting, Ms. Nunez stated both the AARC and the CSRC courses were reviewed by Vice President Stenson and Ms. Freels, and that the courses were up and running by January 4, 2010.

OUTREACH / 25-YEAR RECOGNITION UPDATE
(Stephanie Nunez, Executive Officer)

Ms. Nunez highlighted the following outreach efforts:

- Established Facebook and MySpace sites.
- YouTube clip featuring Dr. Sheldon on respiratory failure.
- Outreach website has been launched.
- Career posters available to print.
- Mailing respiratory care career DVDs (at a rate of about 3 per week).
- Watching any new legislation that may create any healthcare committees or task force to request inclusion of a respiratory care practitioner.
- Scheduled DCA's Director to give presentation at CSRC conference.
- Ordering Lapel Pins – to be mailed out to every active licensee along with career brochure.

Ms. Nunez explained that bringing awareness to the California Legislature and the grassroots outreach efforts will be delayed to focus on the Performance Improvement Plan. Instead of visiting high schools, staff will be mailing outreach items and will try to have more telephone conversations with the schools.

SB 1441 IMPLEMENTATION PLAN
(Stephanie Nunez, Executive Officer)

Ms. Nunez explained the purpose of SB 1441 is to gain consistency among the healing arts boards and how they monitor probationers and handle their diversion programs. She stated the most significant standard is the increase in the number of drug tests for probationers per year.

Mr. Spearman expressed concern with the additional costs related to the increased number of drug tests. He suggested the Board provide notification of this increase to the respiratory care program directors to share with students who are in the process of entering a program and may be impacted by the increase.

Discussion ensued.

Ms. Nunez stated that in the future staff would revise the brochure currently mailed out to the programs to include this information. In the meantime, a letter will be sent to all program directors notifying them of the increased testing requirements.

Ms. Stenson expressed her approval for uniform standard #8 which states when a licensee tests positive for a banned substance the Board shall immediately place them on “inactive” status, instruct the licensee to leave work, and notify the licensee’s employer. Ms. Nunez stated this standard would require a legislative change, but the idea is not to allow someone testing “dirty” to work while the Board tries to discipline them.

Director Stiger commented on how refreshing it is to hear a Board understand that their primary focus is consumer protection. It is the Board’s responsibility to implement these uniform standards. Some will require legislative and some regulatory changes but there are some the Board can work on right now. Director Stiger expressed his appreciation for the work the Board is doing.

ENFORCEMENT PERFORMANCE IMPROVEMENT PLAN *(Stephanie Nunez, Executive Officer)*

Ms. Nunez explained, at the Deputy Director’s request, all boards were asked to submit an Enforcement Improvement Plan to address improvements that will be made in enforcement programs over the next twelve months.

Ms. Nunez explained the RCB’s backlog situation, stating in the past nine years the RCB has reduced its staff positions while increasing its workload. At the same time, furloughs have essentially cut the workforce by an additional 15%. She further explained a new Executive Order requiring state agencies to cut an additional 5% from its salaries and wages budget has forced the RCB to keep vacant more positions that would have been used to address the enforcement backlog.

Ms. Nunez stated the RCB improvement plan would include the following:

- Address the backlog of higher priority enforcement cases.
- Have all enforcement staff complete the New Enforcement Academy
- Re-class existing vacancy to Non-Sworn Special Investigator and fill as soon as possible
- RCB trained and received subpoena authority authorization from DCA which will be used to expedite high priority cases
- SB1441 (uniform standards). RCB work with DCA and Legal to determine legislative and regulatory amendments needed.
- Explore the authority and resources needed to access a national database to determine if disciplinary action has been taken in another state, for new and existing licensees. (currently in legislation.)
- Automate applicant criminal background checks – electronic report coming straight from the Department of Justice.
- Develop policies for complaint level/priority and anonymous complaints and complaint intake.
- Expert witness guidelines and recruitment.
- Reevaluate enforcement program/ resources.
- Continue to provide support in the development and execution of the CPEI.
- RCB Meetings – Make agenda items available on the RCBs website and include a “Director’s Report” on each of its agendas.

President Renner and Ms. Magaña asked some clarifying questions

President Renner moved that the Board accept the Enforcement Improvement Plan as submitted with a caveat as to any impact this may have on the previously established Strategic Plan.

Ms. Nunez stated the impact would be to the Outreach Program. While the career website is up, part of the plan was to attend career fairs and visit high schools. The staff person designated to do outreach is now needed to meet the Board's enforcement objectives.

M/ Renner /S/Sheldon

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

ENFORCEMENT STATISTICS

(Charles Spearman, Member)

Mr. Spearman reviewed enforcement data through December 31, 2009 questioning the increase in the "Fines Imposed" category. Ms. Nunez explained an unlicensed practice case carried a large fine of around \$75,000. Mr. Spearman explained most statistics appear to be on track.

LEGISLATIVE COMMITTEE REPORT

LEGISLATION OF INTEREST

(Larry Renner, President)

Mr. Renner outlined the following legislation of interest:

AB 583 – Requires health care practitioners, with the exception of nurses, to display the type of license and the highest level of academic degree he or she holds.

Position: Oppose unless amended to exempt respiratory care practitioners in the same manner as nurses

AB 877 – Would require the Director of Consumer Affairs to appoint a scope of practice committee of five members, as specified, to perform occupational analyses and prepare written reports, as specified, on any bills seeking to substantively expand the scope of a healing arts practice. The bill would require that the reasonable cost of an analysis and report be paid by the affected licensing board, as specified.

Position: Watch

AB 978 – Require the State Chief Information Officer to develop an online master application for businesses to file for state permits and licenses, and work in collaboration with other state agencies to accomplish this duty

Ms. Kirchmeyer stated that AB 978 has been changed dramatically and now basically states the Office of the Chief Information Officer shall work with the Department of Consumer Affairs to develop a licensing and enforcement database. She explained it then goes on to describe the project. Ms. Kirchmeyer indicated DCA's database will be used as a prototype for other state offices and the Department is asking for a support position from the boards.

Ms. Magaña moved to take a position of support on AB 978.

M/ Magaña /S/Stenson

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

Mr. Olson moved to allow the Executive Committee to change positions on legislation, as needed, with regards to the DCA sponsored legislation of the CPEI.

M/ Olson /S/Aguilera

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

DCA SPONSORED LEGISLATION - CPEI

(Larry Renner, President)

President Renner expressed his concern about the proposed enforcement change “Information Provided on the Internet” which would make information about licensees (such as mailing address) public record. He stated unlike other practitioners that have an office of practice, RCPs may need to give their personal address as their address of record.

Discussion ensued.

Dr. Sheldon moved to support the Consumer Health Care Enforcement Reform Act Proposed language as a whole but requested that Ms. Nunez work with DCA and Senator Negrete-McLeod to revise the following sections:

- 1 Information Provided on the Internet
- 21 Enforcement Timeframes for the Office of the Attorney General
- 24 Require Boards to Check Information Maintained by the National Practitioner Databank
- 37 Adopt Vertical Enforcement and Prosecution Model for All Health Boards

M/ Sheldon /S/Olson

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

Ms. Nunez reviewed possible future amendments brought up by the Senate Business and Profession Committee requesting feedback from the boards. Discussion ensued on the topic of eliminating the Board’s authority to adopt or non-adopt ALJ decisions.

RESPIRATORY CARE PROGRAM HEARING: APPROVAL/DISAPPROVAL CALIFORNIA COLLEGE SAN DIEGO (CCSD)

Ms. Stenson indicated she knows one of the CCSD staff members present (“Bob”) but does not believe it will influence any of her decisions.

The CCSD staff present introduced themselves: Carolyn Hunter, Attorney, David Parker, Executive Director, Bob Goodrow, Program Director, and Barbara Thompson, Chief Operating Officer.

Ms. Nunez opened with background stating it was brought to the Board’s attention last Spring that at least one CCSD student became licensed though he did not meet the minimum education requirements. As a result of this, the Board and CCSD each conducted their own

independent audits and found discrepancies. Issues and responses in the following areas were outlined and discussed:

1. Database
2. Official Transcripts
3. Course Repetitions
4. Transcript Audit Verification Form
5. Courses/Units Crossing Catalogs

Following the discussion, the CCSD representatives stepped out of the meeting room to review the document entitled, "CCSD Hearing Possible Board Actions" provided to them.

CCSD representatives returned to the meeting after consideration of the document. Items of concern that were discussed included:

- 1- The 20 month period the Board would be reviewing progress, statistical data and other information related to CCSD.
- 2- Clinical experience be stricken (III.B-4th paragraph).
- 3- Catalog used and provided for each transcript.

Ms. Nunez stated more time needs to be spent reviewing the conditions to continue program approval as there are many items that have not been discussed. Primarily, each transcript must include a correct graduation date and a copy of the course catalog that was used to determine graduate status.

Discussion ensued.

President Renner suggested moving item III.B paragraph 4 from the "Conditions" section to the "Encourage" section.

Further discussion ensued.

President Renner moved to accept the corrective action plan submitted to the Board by CCSD with the following exception: add that CCSD is in the process of completing the validation of all records. The Board continue program approval with the conditions listed in item III of the document "CCSD Hearing Possible Board Actions" and that the Board move item III.B paragraph 4 from the "Conditions" section to the "Encourage" section. The rest of the conditions would continue as noted in the "Possible Board Actions" including the 20 month period.

M/ Renner /S/Sheldon

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson

MOTION PASSED

LICENSES ISSUED w/ DEFICIENT CCSD TRANSCRIPTS DECISION TO PURSUE RECISSION OF LICENSES

Ms. Nunez and Mr. Renner agreed that if the Board was to pursue rescission of the licenses in question, staff resources would be invested and a transcript with the correct graduation date and course work would likely become available prior to the completion of the adjudication process, making a poor use of already scarce resources.

Mr. Olson moved to use the new process to review the licensees in question under the Licenses Issued w/ Deficient CCSD Transcripts.

M/ Olson /S/Spearman

Unanimous: Aguilera, Magaña, Olson, Renner, Sheldon, Spearman, Stenson
MOTION PASSED

Ms. Nunez agreed to e-mail Mr. Parker the names of the licensees in question.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Mr. Roth stated it takes about 6 months to prepare newly graduated students to work as the clinical knowledge required to graduate is minimal. He inquired if there was a way for the Board to establish a minimum number of clinical hours required for graduation or licensure.

Discussion ensued.

Dr. Sheldon suggested Mr. Roth get signatures from other directors and send them to him so he can request that the matter be considered at an upcoming Board of Medical Advisors Meeting.

*****CLOSED SESSION*****

The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 2:52 p.m. and reconvened into Public Session at 3:00 p.m.

ADJOURNMENT

The Public Session Meeting was adjourned by President Renner at 3:04 p.m.

LARRY L. RENNER
President

STEPHANIE NUNEZ
Executive Officer