



Respiratory Care Board of California

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ARNOLD SCHWARZENEGGER, Governor

PUBLIC SESSION MINUTES

Friday, November 9, 2007

Sheraton San Diego Hotel & Marina
(Across from the San Diego International Airport)
1380 Harbor Island Drive
San Diego, CA 92101
(619) 291-2900

Members Present: Larry L. Renner, RCP, President
Barbara M. Stenson, RCP, Vice-President
Gopal Chaturvedi
Sandra Magaña
Murray Olson
Richard L. Sheldon, M.D.
Charles "Bud" Spearman, RCP

Members Absent: Scott J. Svonkin

Staff Present: LaVonne Powell, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager
Liane Zimmerman, Staff Services Manager
Stephanie Aguirre, Staff Services Analyst

CALL TO ORDER

The Public Session was called to order at 9:03 a.m. by President Renner. A quorum was present.

APPROVAL OF AUGUST 24, 2007 PUBLIC SESSION MINUTES

President Renner noted that Dr. Sheldon departed the August 24, 2007 meeting after the discussion of pulmonary function testing and requested the minutes be corrected to reflect the change.

Dr. Sheldon moved to approve the August 24, 2007 Public Session Minutes with the requested change noted by President Renner.

M/Sheldon/S/Stenson

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

The Board convened into Closed Session.
The Board reconvened into Public Session.

EXECUTIVE OFFICER'S REPORT

(Stephanie Nunez)

Department of Consumer Affairs' Workshops

Ms. Nunez explained that various workshops were held in response to last summer's retreat sponsored by DCA's director. The director organized several workshops with various DCA boards/bureaus so each could express their concerns. Ms. Nunez and Ms. Molina attended three workshops and found them to be very productive. Some of the shared concerns were able to be immediately addressed and others are being reviewed. Ms. Nunez feels that client services, overall, have improved.

Strategic Planning

Ms. Nunez reminded the Board that the March 2008 board meeting will include a strategic planning session. She stated that the California State University Sacramento was contacted, given their work on the workforce study, but explained that their bid was very high. Other vendors were contacted and it appears that MIG will be the facilitator for the strategic planning session. MIG has been used by several Boards. They are highly recommended. The facilitator stated that prior to the strategic planning session, MIG will be contacting each Board Member, the CSRC, and other stakeholders to obtain information needed to accurately conduct the planning session.

Ms. Nunez requested that members take a moment to review the current plan to see if there were any changes needing to be made prior to the March 2008 meeting.

Mr. Mark Goldstein, President, CSRC, complimented the Board on the progress it's made up to this point.

President Renner suggested that members review the current strategic plan and highlight any areas of interest and/or concern prior to the March 2008 strategic planning session. This will ensure that the time allotted during the planning session is used efficiently.

Staffing Changes

Ms. Nunez reported that the Colleen Whitestone, Enforcement Coordinator, and Jennifer Porcalla, Enforcement Analyst, have left the Respiratory Care Board for promotions with the Board of Barbering and Cosmetology, an agency also under DCA.

She added that two other employees have returned to the Board. Paula Velasquez has returned and is working in the Board's Administration Unit and Andrea Pina has returned to the Enforcement Unit as the Legal Analyst.

Kathryn Klumpe has also been hired as the Board's Enforcement Coordinator. Ms. Klumpe was previously the Board's budget analyst.

Ms. Nunez stated all three are wonderful employees and she is pleased to have them.

RCP/CRT/RRT Statistics

Ms. Nunez summarized the California Licensed RCPs holding CRT/RRT Credentials handout and entertained questions from the Board.

INTERAGENCY AGREEMENT WITH DEPARTMENT OF PUBLIC HEALTH (DPH)

Ms. Nunez reported that a "draft" of the Interagency Agreement with the Department of Public Health (DPH) was forwarded to DPH for their review. She added that the plan is to allow DPH to investigate possible unlicensed practice cases and gather evidence that would allow the Board to determine if a citation and fine is warranted. This would allow the Board to be more pro-active in enforcing its regulations. The revenue to cover the DPH costs would be generated from the fines collected, which is estimated that DPH would receive approximately half the fines collected. Unfortunately, it was discovered that there are certain restrictions which require the Board to pay DPH an hourly rate.

Since DPH believes there may be legal ramifications that should be considered, this issue will be further reviewed before specific costs can be determined.

The Board will be provided an update after the legal review has been performed.

EXECUTIVE COMMITTEE REPORT

(Larry L. Renner, President)

Unlicensed Practice of Respiratory Care by LVNs - Request for Office of the Attorney General Legal Opinion

At the last board meeting, Ms. Nunez explained that for a number of years, the RCB has had concerns with the Board of Vocational Nursing & Psychiatric Technicians (BVNPT) distributing

a policy authorizing their licensees to manage ventilators. Correspondence has gone back and forth between the RCB and the BVNPT regarding this issue with no results. In an effort to resolve the issue, the Office of the Attorney General (AG's Office) was requested to review the issue and prepare a legal opinion. However, the DAG was subsequently asked to modify its original response to a "Client Advice Letter." The Board was also advised to contact a legislator and ask that he or she request a legal opinion from the AG's Office. At that time, Dr. Sheldon and Ms. Magaña offered to try and secure a legislator to request a general legal opinion regarding this issue.

Currently, this issue is still ongoing and Dr. Sheldon and Ms. Magaña are continuing their search for a legislator. They will provide an update at the next Board meeting.

Fiscal Review

Ms. Nunez informed the Board that the most significant revenue increase was attributed to the increase in the number of applicants.

She added that during the last fiscal year, revenues and reimbursements exceeded expenditures by \$40,000. If this continues for next fiscal year, the Board may want to consider a temporary fee reduction of \$10 to \$30 for approximately two to six years. A \$10 reduction would result in a loss of approximately \$73,000 in revenue per year.

Another suggestion Ms. Nunez made was for the Board to consider using a significant amount of funds to establish a major outreach campaign that includes radio ads, billboards, advertisement via public transportation, as well as other forms of advertisements.

ENFORCEMENT COMMITTEE REPORT (Gopal Chaturvedi, Chair)

Enforcement Statistics

Mr. Chaturvedi entertained questions/comments from the Board regarding the Enforcement Statistics.

Dr. Sheldon questioned the reduction in the "cases to investigation" numbers. Ms. Nunez reported that a majority of the cases are being processed in-house, and therefore, reduces the number of cases being referred to the Division of Investigation.

Ms. Nunez added that the applications being received are at an all-time high.

EDUCATION COMMITTEE REPORT (Barbara M. Stenson, RCP, Chair)

RCB Observation of CoARC Site Visit

Vice-President Stenson reported that she will be an observer at a CoARC site visit on December 6-7, 2007 at San Joaquin Valley College, located in Rancho Cordova. She will provide an update regarding the site visit at the next Board meeting.

LEGISLATIVE/LEGAL AFFAIRS COMMITTEE REPORT

(Larry L. Renner, RCP, Chair)

Legislation of Interest Chaptered/Vetoed

AB 1025 - Professions and Vocations: Licensure

Provides that a person may not be denied occupational or professional licensure based solely on a criminal conviction if the person has been rehabilitated. Provides that a person may not be denied licensure or have his or her license suspended or revoked solely based on a criminal conviction that has been dismissed on specified grounds, unless a board provides substantial evidence justifying the denial, suspension, or revocation. Requires the maintaining of certain criminal record information.

Board's Position: Oppose

Status: Vetoed by the Governor on October 13, 2007

SB 1047 - Business, Professions and Economic Development Cmt

Relates to meetings of the various boards under the Department of Consumer Affairs, the licensure requirements for professional fiduciaries, technical changes to the Contractor's State Licensing Law, structural pest control operators, electronics and appliance repair dealers and service contractors, the filing of accusations against an automotive repair dealer, wholesalers, professional engineers, and land surveyors.

Board's Position: Watch

Status: Signed by the Governor. Chaptered by Secretary of State (Chapter No. 354).

Proposed Legislation

Submission to Department of Consumer Affairs

Ms. Nunez informed the Board that all of the legislative proposals submitted to the Department, except one, were approved and have been forwarded to the State and Consumer Services Agency for its review and approval. Those approved by the State and Consumer Services Agency will be forwarded to the Governor's Office for final approval.

The proposed legislation includes:

- Conviction Documentation

- Cost Recovery (for probation violations)
- Discipline: Drugs & Alcohol
- State of Emergency - Liability
- Immediate 60-Day Suspension - Sex Crime

The Department did not approve or forward the pulmonary function testing exemption, because it feels it is inappropriate for the Board to exempt a group of people and then require training. DCA added that the Board has no authority to enforce this. Therefore, it is incumbent upon other interested parties to seek this type of exemption.

Proposal for Polysomnography Licensure

Ms. Nunez summarized the proposed legislation for licensure of polysomnographers. She added that she and Ms. Molina were invited by Terrilynn Solomon, a licensed RCP and credentialed polysomnographer, to attend a meeting regarding this issue on November 6th in Monterey. At the meeting, some participants offered support for licensure, while many expressed opposition.

The Board was informed that the DHS has actually cited and fined a sleep lab in the Monterey area for the use of unlicensed/unqualified personnel in the performance of sleep studies.

Discussion ensued.

Dr. Sheldon suggested that those representing the interest of the polysomnography profession submit a letter to the Board 30-days prior to the March 2008 meeting, outlining their concerns and describe their plan of action.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Mark Goldstein, President, CSRC: Mr. Goldstein expressed his support regarding the Board's decision to pursue polysomnography licensure.

Kate Gattuso: Commented that when individuals are referred to a sleep lab, the individual usually has some type of medical condition, therefore should an incident occur, the unlicensed staff may not be qualified to handle the situation.

Sleep Technician, Los Angeles: Feels the idea of polysomnography licensure is a valid, but has some reservations as to whether or not the RCB is the agency that should be charged with oversight of the profession.

Dr. Sheldon responded that establishing a separate agency would be very expensive.

President Renner added that if there were two separate licensing agencies and an individual performs the duties of both, licensure from both entities may be required and would result in an additional out-of-pocket expense to the practitioner.

Bob Bence, Clinical Specialist, Fischer & Paykel Healthcare: Mr. Bence recalled that years ago there was a report on enforcement by demographics and wondered if something similar is going to be done for this situation, as it may be beneficial.

Ms. Molina explained to Mr. Bence that he may be referring to the 1-year/2-year education comparison done many years ago which outlined the number of licensees who obtained licensure through a one-year education, a two-year education, or through the grandfather clause.

Mr. Bence then asked if there are any plans to audit CEU providers. Ms. Powell replied that the Board does not have jurisdiction over CE providers.

Ms. Nunez added that the Board accepts providers that have already been approved/recognized by the CSRC, AARC, AMA, CNA organizations, as well as others specified within California Code of Regulations section 1399.352.

ELECTION OF OFFICERS

President Renner entertained motions for the election of Board president.

Dr. Sheldon nominated Larry Renner for president.

M/Sheldon/S/Stenson

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

President Renner entertained motions for the election of Board vice-president.

Mr. Olson nominated Barbara Stenson for vice-president.

M/Olson/S/Sheldon

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

FUTURE AGENDA ITEMS

- ★ Proposal for Polysomnography Licensure
- ★ Outcome of RCB observation of CoARC site visit

ADJOURNMENT

The Public Session Meeting was adjourned by President Renner at 12:11 p.m.

LARRY L. RENNER, RCP
President

STEPHANIE NUNEZ
Executive Officer