



Respiratory Care Board of California

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ARNOLD SCHWARZENEGGER, Governor

PUBLIC SESSION MINUTES

November 20, 2008

**The Westin Los Angeles Airport
Third Floor, Room 328
5400 West Century Boulevard
Los Angeles CA 90045**

Members Present: Larry L. Renner, BS, RCP, RRT, RPFT, President
Lupe V. Aguilera
Gopal Chaturvedi (arrived at 10:25 a.m.)
Murray Olson, RCP
Charles B. Spearman, MSEd, RCP, RRT
Barbara M. Stenson, RCP, RRT

Members Absent: Sandra Magaña
Richard L. Sheldon, M.D.

Staff Present: Dianne Dobbs, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager
Liane Zimmerman, Staff Services Manager

CALL TO ORDER

The Public Session was called to order at 9:05 a.m. by President Renner. A quorum was present.

APPROVAL OF JUNE 13, 2008 PUBLIC SESSION MINUTES

Mr. Spearman moved to approve the June 13, 2008 Public Session minutes as written.

M/Spearman/S/Olson

Unanimous: Aguilera, Olson, Renner, Spearman, Stenson

MOTION PASSED

CLOSED SESSION

The Board convened into Closed Session, as authorized by Government Code Section 11126(c), subdivision (3) at 9:10 a.m. and reconvened into Public Session at 9:30 a.m.

EXECUTIVE OFFICER'S REPORT

(Stephanie Nunez)

Out-of-State Travel

Ms. Nunez provided the Board with an update regarding requested out-of-state trips and explained that the AARC Planning Conference tentatively scheduled for April 2009 will be a top priority, Mr. Spearman offered to attend. Ms. Nunez said notification of approval or denial of the requested out-of-state trips should be received in the near future.

Ventilator Demonstration (Obj. 2.1)

In August, Ms. Nunez and Ms. Molina met with DCA Executive Staff, LVN Board staff, and legal counsel concerning the Board's movement towards citing and fining Licensed Vocational Nurses for the unauthorized practice of respiratory care - specifically for ventilator care.

Following the meeting, Ms. Dobbs requested to see a ventilator demonstration. On September 17, 2008, RCB staff and Ms. Dobbs visited Kindred Hospital in Folsom, California, and received a hands-on demonstration of ventilator care. The demonstration brought clarity to the issue and strengthened support to ensure LVN's are not making ventilator changes or performing ventilator checks as they require assessments well beyond "basic assessment (data collection)" as allowed by the LVN's scope of practice.

Transcripts of the demonstration were prepared and provided to DCA Executive Staff.

The Board asked that President Renner and Ms. Nunez conduct a conference call with the LVN Board President and Executive Officer to give them a heads up that the Board is moving forward with citing and fining LVNs practicing respiratory care outside their scope of practice.

Public Comment -

George Garcia, MBA, RRT, RCP: Mr. Garcia commented that the AARC has clinical practice guidelines on ventilator demonstrations. He added that the NBRC is the only Board that validates the ability to perform respiratory therapy which is done through their entry-level and advanced level examinations. Also, as far as he knows, LVN programs are still vocational, non-associate degree programs, and that is not something that is included in LVN training.

Concurrent Therapy (Obj. 4.1)

Ms. Nunez reported that the Board published both the AARC and CSRC's papers on concurrent therapy in its newsletter which was disseminated last week. She added that this was in line with one of the Board's strategic plan objectives.

Public Comment -

Jack McGee, Government Affairs Chair, CSRC: As the Board is aware, the CSRC is in support of the white paper on this subject and those are good positions to take, but as you start looking at enforcement issues, we should bare in mind that there are therapies that become more continuous therapy (can last hours) as opposed to a spot treatment or short term therapy (can last between 10 and 30 minutes). Mr. McGee feels that it will be a stretch for the Board to enforce and mandate a patient that is receiving six hours of therapy and to have a therapist in attendance for the entire six hours and feels that the Board should research this further. For example, where the therapy is administered, is the device the same or similar to the device being used to administer a short-term treatment, etc. He feels that it is not as simple as an issue as the it might be imagined.

President Renner replied that he hopes the policies enacted will have the standards in which the monitoring will be different for a long-term treatment as opposed to a short-term treatment.

Vice-President Stenson's concern is that Medicare fraud may occur and would like to know what could be done to prevent this from happening, should people report it?

Ms. Nunez replied that she could look into it and possibly further address the matter in another article in the next newsletter. She also noted that enforcement of patient safety, as it relates to facilities using concurrent therapy, rests with the California Department of Public Health (CDPH).

Enforcement and Public Disclosures

Ms. Nunez explained that as a result of media attention given to a couple of DCA boards who did not have some items in place affecting public protection, DCA Director Carrie Lopez issued a memo to all executive officers and bureau chiefs implementing a number of enforcement and public disclosure policies.

Ms Nunez was happy to report that in regards to the fingerprinting of existing licensees, the Board has been doing this since its inception in 1985, and since January 1995, the Board's renewal forms have included a criminal conviction question. Website publication of disciplinary action information has been available on the Board's website since January 2006, and in regards to Interim Suspension Orders, the Board has an informal in-house policy in place.

Mr. Steve Hartzell, Executive Officer of the Physical Therapy Board, asked Ms. Nunez if she had informed her Board of DCA's ISO bill. Ms. Nunez replied that she was not aware of any such legislation.

President Renner and Vice-President Stenson will send a letter to DCA Director, Carrie Lopez, and Chief Deputy Director, Scott Reid, requesting their support of the Board's ISO bill. (Subsequent to this meeting, it was found there was no such legislation.)

Customer Service / Staffing

The Board was informed that Jeff Winn, a long-time RCB employee, accepted another position that changes his career path.

Ms. Nunez reported that due to an increase of new applications, staff are beginning to feel the effects. In response to this increase, the vacant Office Assistant position will soon be filled. The individual will be assigned to the Licensing Unit and will be answering telephone calls.

In addition, Ms. Nunez is also planning to fill the last vacant analyst position which will be assigned to the Outreach Unit.

These hires will exhaust all of the Board's vacancies. Any additional staff will need to be acquired through the BCP process.

The DCA is offering a training course entitled "Sailing the 7 C's of Customer Service," which is available to all DCA employees. DCA has agreed to provide a custom training course at the Board office in February 2009.

Investigations/Inspections (Obj. 2.1)

Ms. Nunez explained that at the last meeting the Board gave her permission to move forward with the contract process to utilize the services of a licensed RCP to assist with unlicensed practice inspections/investigations. While going through this process, Ms. Nunez discovered that hiring retired annuitant investigators may be an alternative. This would be a benefit as it would alleviate general staff being required to conduct inspections or enter facilities. She added that the plan is to have expert witnesses accompany the retired investigators during these inspections. In addition, these positions are permanent intermittent, and therefore are only paid for hours worked. Ms. Nunez has received approval to hire two retired investigators and is currently seeking qualified applicants.

AARC Exhibit Information (Obj. 4.2)

Ms. Nunez stated that the AARC's Annual Convention is being held in California in December. The RCB will have an exhibit booth at the convention, where staff will be available to answer questions. In an effort to do our small part in contributing to California's economy, staff wanted to do something a little different and special to welcome visitors (and potential new licensees) to the RCB booth. Staff also wanted to use this as an opportunity to invite other licensed RCPs to join California's labor force. Ms. Nunez referred to Attachment 2g which provides an example of the props and information that will be available at the booth. The AARC anticipates 3,000 attendees.

EXECUTIVE COMMITTEE REPORT

(Larry L. Renner, RCP, President)

Fiscal Review

President Renner summarized the Fiscal Review document and entertained questions from the Board.

Board Committees - Realignment (Obj. 5.3)

President Renner presented the proposed realignment of the Board's committees and opened this item for discussion.

Emergency Response Support Committee - Mr. Olson expressed his concern that there is no open line of communication with DCA staff regarding issues related to the Emergency Response Support Committee. He feels that vital information and updates that are being disseminated may not be reaching RCPs.

Outreach Committee - Mr. Chaturvedi stated that the outreach workgroup he attended at the PACT Summit the day before expressed shortages of nurses, though no mention of an RCP shortage was made.

Ms. Nunez replied that she discovered, during the conference she attended, that DCA may actually have a unit that may be able to assist with the Board's outreach efforts. She added that she is scheduled to attend a meeting next Tuesday to obtain additional information (i.e., cost, etc.).

She also noted that she will gather additional information concerning disaster response.

Public Comments -

Steve Dakota, DCA, Office of Public Affairs: Offered his assistance to the Board and the Emergency Response Support Committee.

Ed Moser, RCP, San Diego: Mr. Moser explained that he assisted in the San Diego fires and is a part of an emergency medical group where he was the only respiratory therapist for about 2,000 patients.

Mr. Olson replied that it may be difficult to secure respiratory therapists as they are committed and/or obligated to the hospitals they are employed with.

Mr. Olson moved to approve the Board Committee Realignment as written.

M/Olson/S/Chaturvedi

Unanimous: Aguilera, Chaturvedi, Olson, Renner, Spearman, Stenson

MOTION PASSED

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

Publication of Pass/Fail Rates (Obj. 1.2)
CoARC Site Visit Observation (Obj. 1.4)

Vice-President Stenson stated that there are currently 33 respiratory schools in California. Some are proprietary schools and some are part of the state community college system (25 are WASC accredited). One is part of a four-year respiratory therapy program.

The Board became interested in the accreditation process because complaints were received, either at meetings or via reports. Concerns were also identified in the California Respiratory Workforce Study. As a result, the Board began observing the CoARC site visits. In December 2007, the Board observed the first of four site visits. The first was done at a new school; two visits were at schools obtaining re-certification, and the other was at a school that had disciplinary issues. Vice-President Stenson found the visits very helpful in understanding the process.

After reviewing some of the issues found, as well as referring to the Workforce Study, issues for the Board's consideration now include:

1. Should the Board establish a minimum number of hours for clinical education? How many hours and how would the Board monitor such a requirement?
2. Should the Board establish a standardized curriculum? How would this be established and how would the Board monitor this?
3. Should the Board establish minimum education credits, such as require all schools to have classes that would transfer to university level credit?
4. Should the Board require progression from the CRT to the RRT credential? If so, in what time frame? Is the Board able to modify its existing database to track this? How would the Board enforce this?
5. Should the Board require clinical oversight by a licensed instructor (not a preceptor)?
6. Should the Board continue observing CoARC site visits?
7. Should the Board clarify its requirement or require clinical instructors and/or program directors to hold RCP licenses?
8. Should the Board publish exam pass rates by program?
9. Should the Board also publish attrition rates and schools on probation? If so, where will attrition rate information be obtained?

President Renner asked that Ms. Nunez place this item on the next agenda to provide members time to review the document for further discussion.

It was requested that a sample of what the publication of the pass/fail rates may look like, be included with the next agenda.

President Renner moved that the Board continue to observe the CoARC site visits at this time.

M/Renner/S/Stenson

Unanimous: Aguilera, Chaturvedi, Olson, Renner, Spearman, Stenson
MOTION PASSED

Public Comment-

Ed Moser, RCP, San Diego: Mr. Moser stated he recently learned that CoARC was breaking away from CAAHEP.

Ms. Nunez noted that she had not received any notification yet. Though she would look into the matter, because this change would require a legislative amendment.

Ethics Course Update (Obj. 1.3)

Vice-President Stenson reported that effective January 1, 2006 the Board implemented the Law and Professional Ethics Course, which requires licensees to take this course every four years. She added that the first four years will be reached in 2010, therefore, the course will need to be modified.

Ms. Zimmerman informed the Board that letters have been sent to the AARC and the CSRC, the course administrators, informing them that revisions to the course content will need to be made.

ELECTION OF OFFICERS

The following Board elections were held and will be effective for the 2009 calendar year.

Mr. Olson moved to nominate Larry L. Renner for president.

M/Olson/S/Spearman

Unanimous: Aguilera, Chaturvedi, Olson, Renner, Spearman, Stenson
MOTION PASSED

President Renner moved to nominate Barbara M. Stenson as vice-president.

M/Renner/S/Spearman

Unanimous: Aguilera, Chaturvedi, Olson, Renner, Spearman, Stenson
MOTION PASSED

2009 MEETING CALENDAR - SCHEDULE MEETING DATES

The Board agreed to schedule the 2009 board meetings as follows:

- Friday, March 13, 2009 (Sacramento)
- Friday, June 12, 2009 (Los Angeles or San Diego)
- Friday, November 13, 2009 (Sacramento)

OUTREACH: WORKFORCE SHORTAGE (Obj. 4.2)

Ms. Nunez informed the Board that next week she will be meeting with the Department's Outreach Unit to discuss exactly what services they can provide to the Board. She is also considering the possibility of contracting with a marketing firm, but feels it may be difficult getting such a contract approved.

In addition, Ms. Nunez asked the Board to think about possible campaign strategies (i.e., billboards, public service announcements, print ads, etc.) and entertained possible advertising ideas. Some suggestions include:

- Working in collaboration with the Board of Registered Nursing, the Board of Vocational Nursing & Psychiatric Technicians, or the Medical Board on campaign ads;
- Educating the public on the respiratory care practitioner's role;
- Utilizing the Board's website to advertise and promote the respiratory profession;
- Offering to have RCPs provide an overview of the respiratory profession at California high schools;
- Distributing a presentation video to all California respiratory programs;
- Reviewing and updating the Board's "Frequently Asked Questions"

COMPETENCY TESTING LEVELS CRT/RRT (Obj. 1.1)

Review RCP/CRT/RRT Statistics

Ms. Nunez summarized the CRT/RRT versus licensee statistics.

HEARING PROCESS / PROPOSED ALTERNATIVES (Obj. 5.4)

Ms. Nunez reviewed the current administrative hearing process and provided an alternative process. She also explained the pros and cons of each.

Discussion ensued.

The Board decided to keep the hearing process as it currently stands, and should members wish to hear a particular case at a board meeting, they will e-mail Ms. Nunez.

ROSARIO MARÍN, SECRETARY, STATE AND CONSUMER SERVICES AGENCY

President Renner introduced Rosario Marín, Secretary, State and Consumer Services Agency.

Ms. Marín thanked the Board for allowing her to speak, and for their support of the PACT Summit.

EXPERT CONSULTANT PROGRAM (Obj. 2.1)

Ms. Nunez explained that recently there was an enforcement case in which an expert consultant determined that negligence occurred. After an extensive and exhaustive hearing, the Office of Administrative Law determined the evidence failed to meet the standard of clear and convincing evidence.

As a result, the expert consultant program was reviewed to determine how it can be strengthened and how exorbitant costs can be avoided. As a result, the following options were presented:

Option A: RCP Board member reviews only controversial opinions.

If Board staff or the Office of the Attorney General have any concerns with an expert opinion, prior to moving forward with disciplinary action, the case is forwarded to an RCB member to review and determine if the expert's opinion is sound. If the member decides the case is not sound, the member can request the case be withdrawn or request an additional expert opinion.

Option B: RCP Board member reviews all opinions.

Send every expert opinion to an RCP Board member to review and determine if the expert's opinion is sound prior to moving forward with disciplinary action. If the member believes there was no violation, the case will be withdrawn or sent to another expert.

Option C: Another RCP expert reviews controversial opinions.

If Board staff or the Office of the Attorney General have any concerns with an expert opinion, prior to moving forward with disciplinary action, the case is forwarded to another RCP expert to review and determine if the expert's opinion is sound.

Staff recommended Option A. It should be noted that a member who reviews a case cannot vote on anything that goes forward in regards to that particular case.

In addition, Ms. Nunez reported that the Board currently has only five experts within its database. Staff has begun recruitment for additional qualified and competent RCP experts throughout California. Once potential candidates are received and screened, they will be asked to prepare an expert report on a mock case. Staff proposes that one or more RCB member review each candidate's report on the mock case. If the member(s) decides the candidate prepared a sound opinion, the candidate will be enrolled and added to the Board's database of expert consultants.

Mr. Spearman moved that Option A be used unless there is a quorum issue, then Option C will be implemented.

M/Spearman/S/Stenson

Unanimous: Aguilera, Chaturvedi, Olson, Renner, Spearman, Stenson

MOTION PASSED

ENFORCEMENT STATISTICS
(Gopal Chaturvedi, Chair)

Mr. Chaturvedi summarized the Enforcement Statistics and entertained questions from the Board.

LEGISLATIVE COMMITTEE REPORT
(Larry L. Renner, RCP, Chair)

Legislation of Interest Chaptered/Vetoed

AB 13 - Hospitals: Staffing
Position: Watch
Status: Vetoed by Governor

AB 64: Uniform Emergency Volunteer Health Practitioners Act
Position: Watch
Status: Failed - Adjourned

AB 1434: Medi-Cal: Providers: Financing
Position: Watch
Status: Failed - Adjourned

AB 1545: Professions and Vocations
Position: Watch
Status: Enacted, Chapter No. 35

AB 1925: Franchise Tax Board: Occupational Licenses
Position: Watch
Status: Failed - Adjourned

AB 2244: University of California Hospitals: Staffing
Position: Watch
Status: Vetoed by Governor

AB 2375: Health Care Workforce: Master Plan
Position: Watch
Status: Failed

AB 2649: Medical Assistants: Authorized Services
Position: Watch
Status: Vetoed by Governor

SB 761: Healing Arts: Diversion: Investigators
Position: Watch
Status: Failed

SB 797: Professions and Vocations

Position: Watch

Status: Enacted, Chapter No. 33

Ms. Nunez explained that this bill affects us as it has been approximately three years since a review has been conducted. The Sunset Review Committee was abolished and was actually placed under a different committee. Due to that, several boards that were up for review last year were actually abolished and are now bureaus. The DCA was able to keep the members involved by making them members of an advisory committee. The Respiratory Care Board is up for review this year and our Sunset Review Report should have been submitted last September, but the reports are not being accepted as a process has not been determined. Ms. Nunez added that in order to stay intact, a legislative extension must be submitted and in effect by January 1, 2010.

SB 840: Single-Payer Health Care Coverage

Position: Watch

Status: Vetoed by Governor

SB 963: Department of Consumer Affairs: Regulatory Boards

Position: Watch

Status: Enacted, Chapter No. 385

SB 1125: Polysomnographic Technologist Act

Position: Support

Status: Failed

SB 1402: Reporting Requirements

Position: Watch

Status: Vetoed by Governor

SB 1441: Healing Arts Practitioners: Substance Abuse

Position: Watch

Status: Enacted, Chapter No. 548

SB 1454: Health Arts: Outpatient Settings

Position: Watch

Status: Failed - Adjourned

SB 1498: Maintenance of the Codes

Position: Watch

Status: Enacted, Chapter No. 179

SB 1526: Polysomnographic Technologists: Disorders

Position: Support

Status: Vetoed by Governor

Ms. Nunez asked the Board for feedback on this issue. The Board acknowledged because there are no reasonable alternatives at this time, it must continue enforcing existing laws prohibiting unlicensed practice.

SB 1779: Professions and Vocations

Position: Watch

Status: Vetoed by Governor

Proposed Legislation

President Renner provided a summary of the Board's 2009 proposed legislation, which include:

- Conviction Documentation:
- Cost Recovery (Probation Violations):
- State of Emergency-Liability (Obj. 3.1):
- Drugs and Alcohol at Work:
- Immediate 60-Day Suspension (Sex Crime):
- Employer Definition (Mandatory Reporting of Registries) (Obj. 2.2):
- Sunset Extension:
- Fingerprint Submissions (DCA Sponsored):

Mr. Spearman moved to approve proposed legislation as written.

M/Spearman/S/Stenson

Unanimous: Aguilera, Chaturvedi, Olson, Renner, Spearman, Stenson

MOTION PASSED

Ms. Nunez added she would also propose language to accommodate any changes in CoARC, that were raised by Mr. Moser earlier, as appropriate.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

None were received at this time.

FUTURE AGENDA ITEMS

- * Include examples of pass/fail rates (Obj. 1.2)

ADJOURNMENT

The Public Session Meeting was adjourned by President Renner at 3:55 p.m.

LARRY L. RENNER
President

STEPHANIE A. NUNEZ
Executive Officer