



PUBLIC SESSION MINUTES

Friday, February 2, 2018

**Concorde Career College
12951 Euclid St., Suite 101, Room 220
Garden Grove, CA 92840**

Members Present: Alan Roth, MS, MBA, RRT-NPS, FAARC, President
Thomas Wagner, BS, RRT, FAARC, Vice President
Mary Ellen Early
Rebecca Franzoia
Mark Goldstein, MPA, RCP, RRT
Michael Hardeman
Sam Kbushyan, MBA
Ronald Lewis, M.D.
Judy McKeever, RCP, RRT

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 9:00 a.m. by President Roth.

PUBLIC COMMENT

President Roth explained that public comment would be allowed on agenda items, as those items are discussed by the Board during the meeting. He added that 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.

APPROVAL OF OCTOBER 13, 2017 MEETING MINUTES

Ms. McKeever moved to approve the October 13, 2017 Public Session minutes as written.

Request for Public Comment:

No public comment was received.

M/ McKeever/S/Early

In favor: Early, Franzoia, Goldstein, Hardeman, Kbushyan, McKeever, Wagner, Roth

Abstain: Lewis

MOTION PASSED

PRESENTATION CONCERNING THE ACTIVITIES OF THE DEPARTMENT OF CONSUMER AFFAIRS – Dean R. Grafilo, Director of Dept. of Consumer Affairs.

President Roth welcomed the Department of Consumer Affairs Director, Dean Grafilo who introduced himself and updated the Board about various DCA events and projects:

The Department held its Director's quarterly meeting with Executive Officers, Bureau Chiefs and Board Presidents to discuss important issues facing the Department, boards, and bureaus. The Director welcomed the feedback from President Roth for a call-in option to these meetings and added he would be open to that option.

The Departments Future Leadership Development (FLD) Program continues to make steps forward. The FLD mentees, in addition to being paired with a mentor are participating in special leadership development exercises and working on special projects that could positively impact DCA. They are developing new work relationships and are meeting with several executives who share career advice. Recently, the FLD group spent time with Alexis Podesta, Secretary for the Business, Consumer Services and Housing Agency, and plan to spend time with Mona Pascal, Appointment Secretary for Governor Brown in an effort to expose as many of these future leaders to current leaders so they can learn and hear directly from them.

SOLID has conducted a series of gatherings with board executive officers, bureau chiefs and DCA executives to provide a forum for transferring knowledge, building trust and establishing network relationships.

Dates for the 2018 Board Member Orientation Training have been scheduled. Board members are required to complete Board Member Training within one year of appointment and upon reappointment to a board. Upcoming training will be June 6, September 18, and December 5.

Director Grafilo expressed his appreciation to the Board for sharing his vision of creating stronger consumer protection for all Californians.

President Roth thanked the Director for his service and positive attitude.

Request for Public Comment:

George Garcia, manager at Mission Hospital in Mission Viejo, stated he agrees with the presentation regarding the ability to have a way to call in and/or have a teleconference. President Roth stated the meetings are recorded and webcast live and can be viewed both at the time of the meeting and after the meeting is over for those who cannot attend.

Ms. McKeever added it would be a good idea and a better way to get input from more practitioners if the Board offered a teleconference where people watching the webcast could call-in, provided they understood the protocol of how the meeting is run.

RESPIRATORY BACCALAUREATE DEGREE PILOT PROGRAM PRESENTATIONS

4a. Skyline College: Raymond Hernandez, MPH, RRT, NPS, Dean-Science, Math, Technology

Ray Hernandez gave a presentation on the respiratory baccalaureate degree pilot program at Skyline College. Mr. Hernandez thanked the Board for allowing him to speak on behalf of the community college system and the public system in terms of further education. He added, this is really helping the profession move forward setting the stage across the nation in terms of how we can build more capacity for further education. Presentation highlights included:

In 2014, the nation had been talking about the need for the bachelor's degree to meet the workforce needs. Legislature looked at the capacity of public education and how it could help and authorized 15 community college districts to offer bachelor's degrees on a pilot basis with the restriction that each pilot community college district must not duplicate a bachelor's degree already offered by one of the universities.

A study was conducted throughout the bay area, contacting 90 institutions with 30 responses. The outcome was an overwhelming need for the bachelor degree program to further the education and training of practitioners.

Two tracks were identified in terms of what was needed above the entry level associate degree program. One identified more education and training for direct care. The second track included leadership roles and specialty areas as future retirements will cause the industry to look at what is needed to move forward. Both tracks could not be provided so the leadership and specialty area tracks are what the program followed.

A regional effort of 30 members, which included educators, employers, graduates, lead experts developed the curriculum. The major content areas include case management, education, leadership management, research, and neonatal pediatrics. A comprehensive, project-based curriculum was developed.

Cohort 3 will launch in the fall of 2018 which will be fully online and will reach all Californians. Preference will be given to residents of California but will be open to outside of the state if any seats are left to fill.

Mr. Hernandez ended by thanking everyone for their hard work stating this is a major step forward for the respiratory care profession in California. He added he hopes these two programs become beacons for more use within the community college system once they see their success.

4b. Modesto Jr. College: Alan Roth, MS,, MBA, RRT-NPS, FAARC, FCCP

President Roth stated the first cohort for Modesto Junior College (MJC) started in 2017. Both programs are similar but one of the things important to MJC was transferability. Another goal was to increase the diversity of the program to reflect the community at large and to advance the profession to reflect that same diversity. The target enrollment was 40 for the first cohort, but only 23 had successfully completed the total 39 units of UC transferability for admission. Currently, there are 19 students and no students have left due to academics. The second cohort, a hybrid, will essentially work out the kinks relative to the program and start in August 2018. There is no clinical component to the program as there is no availability for advance practice within the Central Valley. What is important to emphasize in the program are the other elements: research, management and education. Moving forward he believes they will have enough to show a positive outcome and continue these programs beyond 2022.

President Roth added that the group that developed the curriculum and looked at what was important from the point of view of the professional societies, the employers and other therapists. He reiterated how extremely important this was and thanked everyone involved in the success of moving the respiratory program forward.

Request for Public Comment:

No public comment was received.

PROPOSED INTERIM LEGISLATIVE ACTION POLICY

A revision to a current policy adopted in 2005 was proposed allowing the Executive Committee to make decisions on legislation that comes to their attention in-between Board meetings. President Roth stated that on occasion, the Board needs to be able to consult and look at issues that are important to the Board, the community and therapists and make decisions rapidly.

Dr. Lewis questioned the proposed amendment to the existing policy and expressed his concern that the entire Board may not be involved in certain legislative areas. Dr. Lewis asked Legal Counsel if this type of policy is common with other boards.

Mr. Chan-You responded that since this has been a policy in place where the Board has delegated authority to a particular Committee, he did not see a problem with it. However, he added he could do more research and get back with a specific answer to that question.

Ms. Nunez responded this is an old, existing Board policy that basically gives permission to the Executive Committee to make legislative decisions in-between Board meetings and ensures the decisions are brought back to the Board to be codified. She explained that without this policy, it may prove to be too late to wait until a next Board meeting to take action.

Discussion ensued.

Ms. Nunez explained if the Board has not taken a position on a bill, staff would not be able to work with legislative staff, or even testify if something came up suddenly.

Dr. Lewis restated his desire to have the Board authorize all opposition or support of bills.

President Roth reiterated the Executive Committee is just facilitating the decision making in the time between Board meetings and not bypassing the Board. The Board still discusses, takes positions and votes on legislation at Board meetings.

Vice President Wagner moved to adopt the revised policy.

Request for Public Comment:

George Garcia, Mission Hospital, stated he was not representing the hospital but rather commenting as a respiratory therapist. Mr. Garcia agreed the policy was in the interest of efficiency and a good thing. He added they have similar situations at the hospital where certain policies and procedures need to be revised and they have developed pathways that allow small changes to be made as in policy clarification or spelling errors.

Ms. Franzoia inquired if the legislative staff from Consumer Affairs is involved in following the bills. Ms. Nunez stated the Executive Committee taking a position for the Board is rare. It would have to be something fairly significant. and would only be used either to advance or protect the Board's goals and mandate.

Ms. Molina explained a good example is AB 387 which came about last year after the March meeting and needed to be opposed as it was in direct conflict with the Board's education statute.

Dr. Lewis warned that he, personally, was not comfortable with legislation that the entire Board may not have seen first but understands the position the Board is in.

Ms. McKeever inquired if it would be possible to email the legislation to the Board members and give the Board 3 days to make comments.

Mr. Chan-You stated a meeting would be needed for that because the public must have a way to comment.

Mr. Goldstein stated the new policy looks like it primarily cleans up existing language and does not provide an increase in authority.

Mr. Chan-You clarified there is a provision in the law that allows for a meeting for the Board to discuss pending legislation with a 48-hour notice. However, there may be cases where the Board may be asked to testify or take position on certain legislation that may be shorter than the amount of time so certain boards may delegate the authority. The motion before the Board is to renew, revoke, modify or amend the policy.

Mr. Goldstein suggested an amendment that once the action is taken, the Board members are immediately informed of the action.

Vice President Wagner moved to adopt the revised policy on interim legislative action and include an amendment that once the action has been taken, Board members are immediately informed.

M/Wagner /S/Hardeman

In favor: Early, Franzoia, Goldstein, Hardeman, Lewis, McKeever, Wagner, Roth

MOTION PASSED

LEGISLATION OF INTEREST

Ms. Molina explained two bills were being carried over as this is the second year of a two-year legislative cycle. AB 387 has officially died. The Board had taken an oppose position against the bill because it directly conflicts with the Board's statute (Business and Professions Code section 3740). She reviewed the adopted and proposed positions on the remaining legislation: SB 715, SB 769 and SB 1793.

- AB 387: Minimum wage: health professionals: interns
Status: Ordered to Assembly Inactive File at the request of the author. Must be passed by the house of origin by January 31, 2018 to remain active.
Board's Position: Oppose
- SB 715: Department of Consumer Affairs: regulatory boards: removal of board members.
Status: Ordered to the Assembly Inactive File 9/14/17.
Board's Position: Watch
- SB 769: Baccalaureate Degree Pilot Program.
Status: In Assembly Appropriations – No hearing date scheduled
Board's Proposed Position: Watch
- SB 1793: Cannabis Convictions
Status: May be heard in Committee after February 9, 2018
Board's Proposed Position: Watch

Ms. McKeever stated she believes it would be to the Board's benefit to support SB 769 and made a motion to change the Board's position from Watch to Support.

Request for Public Comment:

An unidentified man from the audience commented, it makes absolute sense to extend the pilot program given there is not enough data to make an educated decision.

M/McKeever /S/Wagner

In favor: Early, Franzoia, Goldstein, Hardeman, Kbushyan, Lewis, McKeever, Wagner, Roth
MOTION PASSED

Dr. Lewis moved to accept the recommend Watch position for the remaining legislation (SB 1793)

M/Lewis /S/Goldstein

In favor: Early, Franzoia, Goldstein, Hardeman, Kbushyan, Lewis, McKeever, Wagner, Roth
MOTION PASSED

2018 BOARD SPONSORED PROPOSED LEGISLATION

7a. Proposal to amend §3751, §3753, and §3753.1 of the Business and Professions Code (Reinstatement requirements, exam name clarification, and probation monitoring costs)

Ms. Nunez gave a status update of the proposal to amend Business and Professions Code §3751, §3753, and §3753.1. She added the decision to accept these proposals is expected within a couple of weeks.

President Roth commented this is a very positive step towards continued competency and is in-line with the Board's mandate of public protection

7b. Proposal to amend §3704 and add §3702.5 of the Business and Professions Code (Scope of Practice)

Ms. Nunez stated the proposal to amend §3702 and to add §3702.5 was borne out of the Board's Strategic Plan, Practice Goal No. 2. She explained, the Board views it as an opportunity to expand the levels of education. When the Board expanded the scope of practice several years ago, it was to such an extent that there was a myriad of levels of tasks. This legislation would move regulations to identify standard, intermediate and advanced level tasks. The Board has discussed this with California Society for Respiratory Care (CSRC) and would like to pursue this as a joint effort.

President Roth stated the importance is to identify tasks and skills of competencies within our scope of practice to determine the degree of education and the skill set required in order to complete those tasks and skills as we look down the road at advanced practitioner-type programs.

Ms. McKeever inquired whether this would limit someone already trained to do a task to now not be qualified to perform that task or complete a skill.

Ms. Nunez explained this is intended to label tasks and services, not people. The kind of education one would be required to possess to perform a certain task would be considered during the regulatory process, which would need to come before the Board. That is when it could be addressed if someone believed an individual qualified to perform a specific task was being excluded.

President Roth stated, when the licensing Act came into being, it grandfathered in individuals without credential. As the profession matures and moves forward, we will extend the same to additional requirements.

Ms. McKeever inquired if this would exclude new graduates.

President Roth responded, no, because they are licensed and registered.

Public comment:

An unidentified man stated he has some concerns that this is drafted in a way that will stymie some of the practitioners by omitting them from practicing these advanced types of procedures.

President Roth responded, as a person who is licensed as a Respiratory Care Practitioner, your competencies within the hospital are related to what your Medical Director and the medical staff have approved for your particular institution for those skill levels. That is not licensing. That is competency within your institution. There are those skills that will require a certain competency and education and some that will require more.

Ms. Nunez commented some of the tasks listed as advanced tasks are very advanced such as ECMO and conscious sedation.

An unidentified man stated what he is hearing is that these guidelines will not supersede institutional competencies.

President Roth responded that is correct, they will just differentiate which skills will require a certain amount of education within respiratory care.

Monique Steffani, California Society for Respiratory Care, Government Affairs State Chair stated she is an Emergency Transport Flight and Ground Therapist and under her current license does have the capability to practice advanced scope of practice. She added, the concerns of the audience seem to

be just a misunderstanding and clarified just as respiratory therapists were grandfathered in, it is important to understand that they will also be grandfathered into the scope of practice that is divided into Basic, Intermediate and Advanced tasks.

President Roth reiterated, as a licensed therapist, you are licensed to practice respiratory care within the State of California. What a particular institution prescribes you to be able to do is related to the institution and decided between the medical staff and the medical direction of that particular institution and not relative to licensing.

Discussion ensued.

Michael Madison, California Society of Respiratory Care President stated on January 15, 2018, the CSRC Board voted unanimously to support this piece of legislation and plans to be in Sacramento on Tuesday to advocate for it. As of yet, the proposal does not have an author for this legislation or a bill number, but that may happen before Tuesday. This proposed legislation would ensure appropriate education and training for the three distinct levels of practice; basic, intermediate and advanced, based on market conditions. Respiratory care has become more prevalent and continues to grow, and higher education is needed as a result of the recent, continuing expansion of practice in California and nationally through the work of the AARC and other organizations. This is a responsible approach to identifying safe practice standards surrounding the practice of respiratory care in California. There are a number of market drivers influencing this. In October, during his opening address to the new President of the American College of Chest Physicians during their Conference in Toronto, they announced that they expect to have a shortage of Pulmonologists between now and 2025. So, there will be a distinct need for Respiratory Therapists and other well-trained clinicians to fill roles or start to train to fill roles as positions extend to help fill that gap. The CSRC feels the RCB needs to have the authority to set some regulatory limits and thresholds on some of these new functions and expectations. We view this as forward-looking as opposed to reverse-looking and as preparing the situation here in California so that it can adapt quickly and easily to the new requests that will be coming down the road.

Discussion ensued.

George Garcia stated from a manager's perspective, he believes this to have great intent. The National Board for Respiratory Care is the only organization that performs board certification for respiratory therapy. The NBRC requires individuals that have gone through a program to take a test. Based on their test score determines whether they are a CRT or RRT. His understanding is, the board certification for respiratory therapists is entry level and it is defined by those tasks. When you score above the CRT cut score, then you go to an RRT which is an advanced respiratory therapist board certification. They do provide other advanced practice board certifications such as the neonatal practice, adult critical care specialist, and the respiratory registered pulmonary function certification. These are advanced competencies that are already regulated by another entity and they are recognized nationwide. Mr. Garcia added proposed legislation does concern him that those board certifications may now be a requirement and the Respiratory Care Board may look to this organization to determine what is entry level, what is advanced level and these other advanced competencies. Board certifications do expire and upon licensure here in the State of California, they are required to have their board certification. Many of the respiratory therapists out there have not renewed those board certifications. So, his concern is that there will be registered therapists that will have to go back and get those board certifications and the rules have changed over time and it will be more difficult for them to get those certifications.

Vice President Wagner made a motion to move forward with the proposal to add section 3702.5 and amend section 3704 of the B&P as a co-sponsor with the CSRC to secure placement in a legislative bill and grant the Executive Committee authority to make interim changes as necessary.

Public comment:

Bob Demere, Regional California Medical Group, stated competency must always be the baseline and gave an example to support his point.

M/Wagner /S/Lewis

In favor: Early, Franzoia, Goldstein, Hardeman, Kbushyan, Lewis, McKeever, Wagner, Roth

MOTION PASSED

CONSIDERATION OF AND POSSIBLE ACTION TO ADOPT PROPOSED REGULATORY AMENDMENTS TO SECTION 1399.395 OF DIVISION 13.6 OF TITLE 16 OF THE CALIFORNIA CODE OF REGULATIONS TO INCREASE FEES

Executive Officer Stephanie Nunez gave an overview of the regulatory process to date and directed the Board to the documents in the Board packet, including the proposed regulatory language and the draft Final Statement of Reasons, noting there were no written or oral comments received during the regulatory comment period.

Dr. Lewis moved that the Board adopt the proposed regulatory changes as noticed, and delegate to the Executive Officer the authority to complete the rulemaking file, including making any technical or nonsubstantive changes.

Request for Public Comment:

No comments received.

M/Lewis /S/Goldstein

In favor: Early, Franzoia, Goldstein, Hardeman, Kbushyan, Lewis, McKeever, Roth, Wagner

Unanimous

MOTION PASSED

CALIFORNIA CANNIBIS IMPLEMENTATION UPDATE/IMPACT

Ms. Nunez gave an update with information on the new cannabis law as requested by the Board and added that no changes to the Board's law are necessary at this point. The intent is to treat marijuana like alcohol in that if licensees use marijuana in a manner danger to themselves or others, it will be a violation. Employers still have the right to maintain a drug and alcohol-free workplace and can keep policies that prohibit the use of cannabis by employees. She added, the CHP is one of the agencies leading the effort to identify a scientific method to determine recent cannabis use that would impair a person's ability to drive. The CHP, along with the DCA's Bureau of Cannabis Control is working with UC San Diego to study the effects of cannabis use and impairment on driving.

Discussion ensued.

Ms. Nunez stated she would share the information with the Board as more updates are received.

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

Ms. Nunez asked the Board to consider changing the October meeting from October 19 to October 12 or 26, as October 19 is not a good date for one of the Board's member. It was decided staff will poll members to see which alternative date works best.

FUTURE AGENDA ITEMS

President Roth asked that the next board meeting agenda include, for discussion, the relationship between respiratory care practitioners and the clinical laboratory as it relates to blood gas reporting information as blood gasses are now much more expanded than the items that were initially reported.

Public comment:

No public comment was provided at this time.

ADJOURNMENT

The Public Session Meeting was adjourned by President Roth at 12:00 p.m.

ALAN ROTH
President

STEPHANIE A. NUNEZ
Executive Officer