

**Item: Approval of March 10, 2017 Meeting Minutes**

- Board Action:**
1. President calls the agenda item and it is presented by or as directed by the President.
  2. President Roth asks for a motion:
    - to adopt minutes as presented;
    - to adopt a modified version of minutes as presented;
    - to reject minutes as presented, or
    - any other appropriate motion.
  3. President may request if there is a second to the motion, if not already made.
  4. Board member discussion/edits (if applicable).
  5. Inquire for public comment / Further Board discussion as applicable
  6. Repeat motion if necessary and vote: 1) aye, in favor, 2) no, not in favor, or 3) abstain  
[Members that were not present at the meeting should vote to abstain]



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

## **PUBLIC SESSION MINUTES**

**Friday, March 10, 2017**

**Doubletree by Hilton  
San Diego Downtown  
1646 Front Street  
San Diego, CA 92101**

**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, RRT, RCP  
Michael Hardeman  
Ronald Lewis, M.D.  
Judy McKeever, RRT, RCP  
Laura Romero, Ph.D.

**Staff Present:** Jason Hurtado, Legal Counsel  
Stephanie Nunez, Executive Officer  
Christine Molina, Staff Services Manager

### **CALL TO ORDER**

The Public Session was called to order at 9:29 a.m. by President Roth. Roll call was taken and a quorum was established.

Members present: Early, Franzoia, Goldstein, Hardeman, Lewis, Romero, McKeever, Roth, and Wagner.

1 **PUBLIC COMMENT**

2  
3 President Roth explained that public comment would be allowed on agenda items, as those items are  
4 discussed by the Board during the meeting. He added that under the Bagley-Keene Open Meeting  
5 Act, the Board may not take action on items raised by public comment that are not on the Agenda,  
6 other than to decide whether to schedule that item for a future meeting.  
7

8  
9 **APPROVAL OF OCTOBER 7, 2016 MINUTES**

10  
11 Dr. Lewis moved to approve the October 7, 2016 Public Session minutes with the minor correction on  
12 page 8, line 18 by changing the word “parody” to “parity.”  
13

14 No public comment was received.

15  
16 M/Lewis/S/Wagner

17 In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Romero, Roth, Wagner

18 Abstain: Hardeman  
19

20 MOTION PASSED  
21  
22

23 **EXECUTIVE OFFICER’S REPORT**

24 *(Nunez)*

25  
26 Ms. Nunez reviewed the status on the revisions to the Law and Professional Ethics course stating that  
27 currently the AARC and CSRC have begun to revise their respective courses. Each organization  
28 plans to submit a draft of its course to staff by June 1 for regulatory feedback, have something online  
29 by August 1, and submit the final draft on October 1. The Board can then review the final draft at the  
30 October 13 meeting. The new version of the course is expected to be implemented January 2018.  
31 This process is completed every four years.  
32

33 Ms. Nunez stated she has begun working with SOLID (the Department’s training unit) to facilitate the  
34 Board’s Strategic Planning Session. Ms. Nunez shared the schedule of events leading up to the  
35 strategic planning development session with the Board members on June 30, 2017.  
36

37 Ms. Nunez highlighted the sequence of events concerning issues with the Board of Vocational  
38 Nursing and Psychiatric Technicians (BVNPT) advising the public that LVN’s can practice respiratory  
39 care. After years of attempts by the RCB to resolve this issue, as outlined by Ms. Nunez, this  
40 continues to be a problem. Ms. Nunez advised that a meeting concerning these issues is being  
41 coordinated by the Business, Consumer Services and Housing Agency, and is tentatively scheduled  
42 for April 3, 2017. Ms. Nunez indicated the Board will continue to work to resolve this issue in the  
43 interest of public protection, and intends to continue enforcing the Respiratory Care Act and adhering  
44 to its mandate. It remains the Board’s contention that LVN’s are not qualified or legally authorized to  
45 perform respiratory care.  
46

47 Ms. Franzoia asked Ms. Nunez to send Board Members a brief update after the April 3 meeting with  
48 the BVNPT.  
49

50 The Board’s new website, designed by staff members Katie Pitt and Christine Rust-Schulze, was  
51 launched February 21. Ms. Nunez stated she is very pleased with the new website and gave Ms.  
52 Rust-Schulze and Ms. Pitt accolades for the fantastic job they did developing the new site. Ms. Nunez  
53 announced that the Department of Consumer Affairs has a new director, Dean Grafilo, appointed by

1 the Governor. Mr. Grafilo will replace past director Awet Kidane, who the Board had the privilege of  
2 working with during recent years.

3  
4 **Public Comment:**

5 Mike Madison, CSRC President, stated the CSRC agrees with the Board discussion and would like to  
6 reiterate their stand taken at the BVNPT December meeting, stating education is key. Respiratory  
7 assessment and management of mechanically ventilated patients are probably the most risky things  
8 that respiratory care individuals do with a patient. To short change respiratory patients with lack of  
9 education is not good care. He referred to the CSRC's staffing statement and white paper for details  
10 concerning education for proper performance of procedures. He added the CSRC stands ready to  
11 provide resources for future meetings or further discussion between the two boards.

12  
13  
14 **REVIEW OF AND POSSIBLE ACTION AFTER CONSIDERATION OF THE RCP WORKFORCE  
15 STUDY**

16 *(Roth, Wagner)*

17  
18 President Roth stated the final report is complete but could not be presented at this meeting as the  
19 presenter suffered a family emergency. Mr. Roth stated the item has been deferred to the next  
20 meeting.

21  
22 No public comment was received.

23  
24 **FISCAL REVIEW**

25  
26 President Roth reviewed the Board's revenues, expenditures and fund condition. He discussed the  
27 unexpected costs associated with the BreEZe system, the varying costs of the Attorney General, and  
28 the need for the Board to consider pursuing a legislative license renewal fee increase. President Roth  
29 reminded the Board that it is self-funded, not State funded, and must rely on its revenues to remain  
30 fiscally solvent. He explained the last fee increase was approved in 1999 and went into effect in  
31 2002.

32  
33 Board members discussed two possible scenarios to amend Section 3775 of the Business and  
34 Professions Code:

35  
36 **Scenario 1-** The amount of fees provided in connection with licenses or approvals for the practice of  
37 respiratory care shall be as follows:

38 (a)...

39 (d) For any license term beginning on or after January 1, 1999, the renewal fee shall be established at  
40 two hundred thirty dollars (\$230). The board may increase the renewal fee, by regulation, to an  
41 amount not to exceed three hundred thirty dollars (\$330). The board shall fix the renewal fee so that,  
42 together with the estimated amount from revenue, the reserve balance in the board's contingent fund  
43 shall be equal to approximately six months of annual authorized expenditures. If the estimated  
44 reserve balance in the board's contingent fund will be greater than six months, the board shall reduce  
45 the renewal fee. ~~In no case shall the fee in any year be more than 10 percent greater than the amount~~  
46 ~~of the fee in the preceding year.~~

47  
48 **Scenario 2-** The amount of fees provided in connection with licenses or approvals for the practice of  
49 respiratory care shall be as follows:

50 (a)...

51 (d) For any license term beginning on or after ~~January 1, 1999~~ July 1, 2018, the renewal fee shall be  
52 established at ~~two~~ three hundred thirty dollars (~~\$230~~ \$330). The board may increase the renewal fee,  
53 by regulation, to an amount not to exceed three hundred ~~thirty~~ fifty dollars (~~\$330~~ \$350). The board

1 shall fix the renewal fee so that, together with the estimated amount from revenue, the reserve  
2 balance in the board's contingent fund shall be equal to approximately six months of annual  
3 authorized expenditures. ~~If the estimated reserve balance in the board's contingent fund will be~~  
4 ~~greater than six months, the board shall reduce the renewal fee. In no case shall the fee in any year~~  
5 ~~be more than 10 percent greater than the amount of the fee in the preceding year.~~  
6

7 Dr. Lewis stated he supports Scenario #2 versus the incremental changes in Scenario #1.  
8

9 Ms. McKeever stated she believes respiratory care practitioners will be angry with an increase of \$100  
10 in the licensing fee and would not support this.  
11

12 Ms. Nunez responded the alternative is to increase the fee by smaller increments every year for the  
13 next 4 years. She added without a fee increase, the Board would cease to exist. It would not be able  
14 to pursue enforcement cases, and when the next Sunset Review comes along, the Board would not  
15 be meeting its mandate of protecting the public and may likely be abolished.  
16

17 Dr. Lewis made a motion to pursue legislation relative to a fee increase as outlined in Scenario # 2  
18 (beginning on July 1, 2018 the renewal fee shall increase to \$330) with executive committee authority  
19 to make changes throughout the process.  
20

21 Ms. McKeever inquired if the initial licensing fee could remain at the lower rate for the new RCPs  
22 entering the profession.  
23

24 Ms. Nunez stated having two separate fees could be difficult but the Board might be able to extend  
25 the initial licensing period so new RCPs would have 2-3 years to practice before having to renew their  
26 license.  
27

28 Dr. Romero inquired about the possibility of a payment plan.  
29

30 Ms. Nunez questioned if that would even be possible with the new BreZE system but added since  
31 the system does accept credit cards, that is a type of a payment option.  
32

33 Ms. Nunez stated another option would be to look at reducing the application fee which is now \$300.  
34 If interested, she could bring the information on the effects of these changes to the Board for review at  
35 the next meeting.  
36

37 Mr. Hardeman stated he agrees with Ms. McKeever and understands the financial impact this would  
38 make on the RCPs. He added, in this case, he believes a fee increase is necessary to not jeopardize  
39 the profession. Mr. Hardeman added he has been on many different boards and has not seen one as  
40 compassionate, rarely criticized and run as well as the Respiratory Care Board.  
41

42 **Public Comment:**

43 Michael Madison, CSRC President stated while he recognizes the financial pressures to maintain a  
44 well operating license board, and understands that fee increases are inevitable, the CSRC's position  
45 is to request the Board to remain within the statute of 10% without change.  
46

47 Ms. Nunez stated without a reserve, it is likely a fee increase (beyond the \$330) would be needed  
48 sooner if the increases are made incrementally each year. Ms. Nunez also noted that given the  
49 CSRC's position, a legislative fee increase is unlikely.  
50

51 Ms. Franzoia inquired if both scenarios would be possible from a staff perspective, and Ms. Nunez  
52 responded yes.  
53

1 President Roth restated the motion to pursue legislation relative to a fee increase as outlined in  
2 Scenario 2 (beginning on July 1, 2018 the renewal fee shall increase to \$330 with the reserve balance  
3 to equal approximately 6 months of annual authorized expenditures) giving the Executive Committee  
4 authority to make changes throughout the process as needed.  
5

6 M/Lewis/S/Hardeman  
7 In favor: Early, Franzoia, Goldstein, Lewis, Romero, Roth  
8 Abstain: McKeever, Wagner  
9

10 President Roth made a motion to have staff review the possibilities of extending the initial licensing  
11 period for applicants and/or reducing the application fee in order to decrease the initial financial  
12 impact on new licensees.  
13

14 Michael Madison, CSRC President stated he believes anything would help.  
15

16 M/Roth/S/Goldstein  
17 In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Romero, Roth, Wagner  
18 MOTION PASSED  
19  
20

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

24 *(Roth)*  
25

26 Ms. Nunez gave an overview of the regulatory process to date and directed the Board to the  
27 documents in the Board packet, including the proposed regulatory language, all public comments  
28 received, and the draft Final Statement of Reasons that addressed the public comments. President  
29 Roth commended Board staff for the complete and accurate presentation of the public comments and  
30 the Board's responses thereto in the Final Statement of Reasons.  
31

32 President Roth moved that the Board adopt the proposed regulatory changes as noticed, and  
33 delegate to the Executive Officer the authority to complete the rulemaking file, including making any  
34 technical or non-substantive changes.  
35

36 Michael Madison, CSRC President reiterated CSRC's preference that fee increases adhere to the ten  
37 percent per year cap.  
38

39 M/Roth/S/Lewis  
40 In favor: Early, Franzoia, Hardeman, Goldstein, Lewis, McKeever, Romero, Roth, Wagner  
41 MOTION PASSED  
42  
43

44 **DISCUSSION AND POSSIBLE ACTION AFTER CONSIDERATION OF SUNSET REVIEW**  
45 **TESTIMONY AND LEGISLATURE FEEDBACK AND RECOMMENDATIONS**  
46

47 President Roth stated that Ms. Nunez, Vice President Wagner and himself attended the Sunset  
48 Review hearing before the Legislature on March 6, 2017. He added that the Legislature was  
49 impressed by the well prepared review completed by staff. He also stated that the committee had a  
50 few questions during the review and asked Ms. Nunez to discuss the responses.  
51

1 Ms. Nunez thanked both President Roth and Vice President Wagner for attending the Legislative  
2 Review with her and added what a great job President Roth did in giving the introduction and  
3 answering questions.  
4

5 Ms. Nunez explained that the main issue the Committee had was that the Board's website did not  
6 display disciplinary documents. Ms. Nunez explained that when the Board converted to the BreEZe  
7 system, staff chose to take the disciplinary actions off the website as not to be duplicative of the  
8 information already provided via BreEZe. She went on to explain that approximately 15 years ago,  
9 disciplinary actions were summarized and listed with the person's name. At the advice of legal  
10 counsel, the RCB discontinued this practice as it proved to be very tedious making sure the Board  
11 was not stepping outside the bounds of any legal documents involved. However, it now seems the  
12 Committee wants that practice to be "resurrected". Ms. Nunez stated that Board would look into this  
13 as part of Strategic Planning to determine how to go about providing the information.  
14

15 An additional issue for the Committee was they would like to see the CE audit process more  
16 automated. Ms. Nunez explained, the BreEZe system will soon begin randomly sending out audit  
17 letters to licensees and those licensees, in response, will be able to upload CE documents online.  
18 This will automate our current process and remove some of the paperwork required by staff.  
19

20 Finally, there was the concern of the DMV history requirement for applicants. Ms. Nunez explained,  
21 prior to approximately 2008 DUI's were not reported on rap sheets. As such, the staff would have to  
22 identify that information in the DMV history report. As DUI's are now included on the rap sheets, the  
23 Committee questioned if RCB should still require these lengthy reports. Ms. Nunez concluded, since  
24 the ten year time is up, the RCB will look into not requiring the DMV report except in special  
25 circumstances.  
26

27 President Roth then added that the committee asked about military members and their spouses and  
28 stated that Ms. Nunez gave a great response in stating that Board would not create any barriers to  
29 any military individual in obtaining a license.  
30

31 Finally, the Committee noted that the pass rate relative to the RRT exam has dropped and wanted to  
32 know if that was a barrier to employment in California. President Roth answered by explaining the  
33 change in the examination of having less recall and more decision making in application and that it  
34 had only dropped somewhat. In addition, there was a report from the meeting with the state regulatory  
35 agencies, the AARC and COARC that stated in the 3 states that require the RRT minimum for  
36 licensure, their pass rate was higher nationally than in those states that did not require it.  
37

38 Ms. Nunez added that she wanted to thank the CSRC publically for sending a representative to attend  
39 the review in support of Board.  
40

41 No public comment was received.  
42  
43

44 **REVIEW OF AND POSSIBLE ACTION TO SUPPORT/OPPOSE/WATCH**  
45 **LEGISLATION OF INTEREST**  
46 (Molina)  
47

48 Ms. Molina provided an overview of the proposed 2017 Legislation of Interest and staff recommended  
49 positions highlighting the proposed positions on SB572, SB 796, AB 208, AB 654 and AB 1005:  
50

51 SB 27: Professions and Vocations: licensees: military services  
52 Staff Recommended Position: Watch

53 SB 227: Vocational nurse: feeding tube services: neurodegenerative conditions.

1 Staff Recommended Position: Watch  
2 SB 247: Licensing requirements  
3 Staff Recommended Position: Watch  
4 SB 496: Department of Consumer Affairs: regulatory boards: removal of board members  
5 Staff Recommended Position: Watch  
6 SB 572: Healing arts licensees: violation: grace periods  
7 Staff Recommended Position: Oppose  
8 SB 796: Healing arts boards (RCB Sunset Extension Bill)  
9 Staff Recommended Position: Support  
10 AB 208: Deferred entry of judgment: pretrial diversion.  
11 Staff Recommended Position: Oppose  
12 AB 349: Department of Consumer Affairs: applications for licensure: special immigrant visas  
13 Staff Recommended Position: Watch  
14 AB 654: Pediatric home health care  
15 Staff Recommended Position: Support if Amended  
16 AB 703: Professions and vocations: fee waivers  
17 Staff Recommended Position: Watch  
18 AB 827: Department of Consumer Affairs: high skill immigrants: license information  
19 Staff Recommended Position: Watch  
20 AB 1005: Department of Consumer Affairs  
21 Staff Recommended Position: Oppose Unless Amended  
22

23 Vice President Wagner moved to accept the staff recommended positions.

24 No public comment was received.

25 M/Wagner/S/Goldstein

26 In favor: Early, Franzoia, Goldstein, Lewis, McKeever, Romero, Roth, Wagner

27 MOTION PASSED  
28  
29  
30  
31

### 32 PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA 33

34 Wayne Walls, RCP, Lakewood, CA stated the Pharmacy Board of California is offering CEUs for  
35 practitioners who attend their board meetings. He feels it would be beneficial for respiratory care  
36 practitioners to be able to get and share important information discussed at these meetings and would  
37 like the Board to consider offering CEU for attendance to future Board meetings.  
38  
39

### 40 FUTURE AGENDA ITEMS 41

42 Vice President Wagner stated his concerns with the change in laws surround the use of marijuana in  
43 the State of California and how this will impact the Board's processes in regards to how to determine  
44 intoxication or other issues that may arise.  
45

46 Dr. Lewis stated the RCB is not alone and every board is struggling with this question. This has far  
47 reaching effects and concerns as there is not yet a measurement for intoxication.  
48

49 Ms. Nunez stated the Board has not yet faced this issue but expects the Board will eventually be  
50 challenged and will be relying on our Attorney General to help us wade through the existing laws.  
51

52 Ms. McKeever stated Stanford University is currently working on a method of testing and believes it  
53 will be complete with a year.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28  
29  
30  
31  
32  
33  
34  
35  
36  
37  
38  
39  
40  
41  
42  
43  
44  
45

Betty Polanco, Educator at Pima Medical Institute, Chula Vista, CA inquired what the State of Colorado has instituted or adopted concerning this issue.

Ms. McKeever stated the Board should probably look at Oregon and Washington to see what they are doing regarding marijuana use.

Mr. Goldstein stated even though the State has legalized it, marijuana use is still against Federal law and therefore against the Practice Act.

Mr. Goldstein suggested that the Board look into getting the Department of Health Services to reimburse respiratory care practitioners outside of the facilities possibly sending letters of support especially in view of the increasing number of patients that are on noninvasive ventilation that are being put off at home.

President Roth asked staff to open up a dialog with the Department of Public Health.

Ms. McKeever stated she agrees that offering CEU's for attendance to Board meeting is a good idea as she feels the Board is currently just seen as an entity taking their money and do not understand the Board's processes and related costs. She inquired if the CSRC could work that into a CEU program.

Mr. Madison, CSRC President, stated the CSRC is always ready, willing and able to work with the staff to develop and put processes in place that are an advantage to all RCPs.

=====

**CLOSED SESSION**

The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 11:36 a.m. and reconvened into Public Session at 11:55 a.m.

=====

**ADJOURNMENT**

The Public Session Meeting was adjourned by President Roth at 11:55 a.m.

\_\_\_\_\_  
ALAN ROTH  
President

\_\_\_\_\_  
STEPHANIE A. NUNEZ  
Executive Officer