



PUBLIC SESSION MINUTES

Friday, March 11, 2016

**Hilton San Diego Mission Valley
901 Camino Del Rio South
San Diego, CA 92108**

Members Present: Alan Roth, MS MBA RRT-NPS FAARC, President
Thomas Wagner, BS, RRT, FAARC, Vice President
Mary Ellen Early
Mark Goldstein
Michael Hardeman
Ronald Lewis, M.D.

Staff Present: Kelsey Pruden, Legal Counsel
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager

CALL TO ORDER

The Public Session was called to order at 8:00 a.m. by President Roth. A quorum was established.

Roll Call (present: Early, Goldstein, Hardeman, Lewis, Roth, Wagner)

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 NOVEMBER 6, 2015 MINUTES

Dr. Lewis moved to approve the November 6, 2015 Public Session minutes as written.

M/Lewis /S/Wagner

In favor: Early, Hardeman, Lewis Roth, Wagner

Abstain: Goldstein

MOTION PASSED

EXECUTIVE OFFICER'S REPORT

(Nunez)

a. Sunset Review:

Ms. Nunez stated the written report for Sunset Review will be due sometime at the end of the year adding she is not yet sure what it will consist of but expects a change in format. She further explained that the Board's sunset hearing will likely be scheduled for this time next year.

b. Staffing Ratios

Ms. Nunez reminded the Board of the discussion on staffing ratios from the last meeting. During that meeting Ms. Early stated developing staffing ratios seemed to be beyond the Board's purview, and Mr. Wagner requested staff talk to CSRC about possibly developing a ratio proposal. After discussing it with CSRC, Ms. Nunez determined that CSRC had already been working on staffing ratios and is looking forward to the outcome of their study which will be shared once it is available.

President Roth stated the Board has been successful in completing the majority of the Strategic Plan items relative to the last Sunset Review

Request for Public Comment:

Michael Madison, CSRC President, confirmed CSRC is actively working on requests to come up with a safe staffing practices statement. He stated they have sifted through an abundance of data and will be using a two-step process focusing first on the requirements for safe staffing then the ratio will come in later. He added, UCSD has done some great work in the past which the North Carolina Board later adopted. He hopes to submit something to the Board on or before July 1, 2016.

President Roth inquired how the CSRC's staffing ratio study is relevant to the AARC and national standards.

Mr. Madison stated, the AARC Uniform Reporting Manual is one of the CSRC's reference documents as well as Title 22. They are also referencing the nursing section of Title 22. He added they also sent out network requests, through the AARC, to all state affiliate presidents and all members of the AARC's House of Delegates to get feedback from them in terms of policies, procedures and "rules of thumbs" that they use for following safe standards.

Dr. Lewis inquired whether the staffing ratio is based on the acuteness of the patient or the type of equipment that is being utilized by that particular patient and if there will be built-in safety measures to accommodate for a change in patient status.

Mr. Madison stated that most hospitals have some sort of rule of thumb for such occurrences. He used an example of oxygen and PAP therapy as a threshold with anything above that in acuity level or

difficulty having some type of respiratory assessment action. He added staffing ratios can essentially be built off of that point.

President Roth inquired whether the study was also looking at data concerning outpatient facilities and outpatient care.

Mr. Madison replied that they have looked at data from several sources such as pulmonary rehabilitation, COPD rehabilitation, and cystic fibrosis support management.

4. 2013-2016 STRATEGIC PLAN REVIEW

(Roth)

President Roth reviewed the status and progress of some of the Strategic Plan items as follows:

- Item 2.4 Define limits of RCP's responsibility on home delivery of equipment and patient care.
- Item 2.9 Pursue legislative or regulatory amendments to gain or clarify authorization that would allow RCPs who meet certain requirements to write orders including medications under protocol.
- Item 4.2 Pursue budget change proposals to secure additional staffing to meet strategic objectives.

Dr. Lewis inquired about item 4.3, where it mentioned that the BreEZe online feature was not yet available to new applicants and asked if this was still an outstanding item or if BreEZe is now available to all users (licensees and applicants). He also inquired if a licensee's status is also available to the public on Breeze.

Ms. Nunez replied that currently initial applicants cannot apply online, however, once an individual has been licensed they can renew through BreEZe. She added this is a priority for DCA but has been delayed until after the Breeze Release 2. Ms. Nunez added that the public can view an RCP's license status online through BreEZe.

Request for Public Comment:

Jeffrey Davis, Director of Respiratory Care Services at UCLA, stated he approves of the new BreEZe system and commented on the ease of use as a practitioner. He added, the managers use it regularly and are able to check the status of every employee through the system.

5. CALIFORNIA EXAM STATISTICS

(Roth)

President Roth reviewed the exam data from the NBRC for the new RRT exam. He stated the pass rate for the Therapist Multiple Choice exam (high cut) dropped initially then rose significantly by the 4th quarter, averaging at about 56% for the entire year. The new Clinical Simulation Exam has doubled the number of clinical simulations and as a result the pass rate has dropped for 2015. He added repeat examinations continue to be low. President Roth stated the exam has changed significantly from a recall type to more of an applicable exam, better testing the ability to make decisions. He added programs should be aware of these statistics when preparing their students. Many respiratory directors do not feel that students are well prepared for the rigors of an acute care scenario in all areas. President Roth mentioned a couple of the specialty areas lacking in knowledge are diagnostic and pulmonary rehabilitation.

Dr. Lewis inquired how these numbers compare among different states as this is national data being presented.

Ms. Nunez responded that the data was not separated by states. She stated there was some expectation that the pass percentages would initially drop, however, it actually did not drop as much as expected. She added that, as predicted, the Board did experience a drop in new licensees of about 300/year due to the increase to the new RRT exam.

Dr. Lewis inquired if there is an additional exam respiratory therapists take years after becoming licensed and how competency is accessed in the more seasoned respiratory care practitioners if not through written exam (for example testing every 10 years).

President Roth stated most hospitals and institutions have annual competency days where therapists review high risk procedures and problem prone areas and are tested both written and hands on.

Request for Public Comment:

Wayne Walls, Educator from Lakewood California, stated programs were not geared up for the change in the requirements. The contributing factors to those statistics are changing the exam format by the NBRC and the new RRT requirement in California. Historically, the RRT exam was not a minimum entry level program. As such, most programs did not prepare students to take the RRT exam anticipating the practitioners would go on and get practical application after getting licensed then return to take the RRT exam. He added, in his opinion, there are not enough hours in an Associate Degree program to meet all of the needs across the entire spectrum of services to include rehab, home care, alternate care site as well as acute care settings. He believes the Board should consider looking at a baccalaureate degree as a minimum requirement to prepare those entering the profession as well as to promote the growth of the profession.

Jeffrey Davis, UCLA, stated as a manager of a large teaching hospital, he has seen in the past 30 years, a change in that so much more is being required coming out of school. While he believes there is still a place for the Associate Degree program (as there are hospitals that do not perform advance procedures), there is definitely a need for advanced degree training. He added it is important to make sure it is not just a baccalaureate degree but a degree in respiratory care.

6. ENFORCEMENT PERFORMANCE MEASURES AND STATISTICS

President Roth reviewed the Performance Measures and commended staff for their excellent work and ability to expedite all licensing issues as they pertain to the Performance Measure results.

Ms. Early questioned how and by whom the targets for the Performance Measures were set.

Ms. Nunez responded that several years ago, the Department asked each board to set their own targets. Many Boards selected the same targets which have resulted in similarities across the Boards.

Ms. Early then questioned that in the interest of total quality improvement, would it make sense to raise the benchmarks by lowering some of the targets since the Board seemed to be performing so well.

Ms. Nunez stated that although she understood the logic behind the question, the problem lies in when the Board goes before the Legislature for the Sunset Review or a Budget Proposal, if the Board is not meeting their target, it can be held against them. So lowering the targets could harm the Board.

Dr. Lewis stated, he believes these targets are serving the public well and to change could possibly work against the Board.

President Roth added the Strategic Plan should be used as a tool for improving quality as opposed to changing the performance measures.

Ms. Early praised the staff for doing a marvelous job on these Performance Measures.

7. PRESENTATION AND DISCUSSION ON THE NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS VS. FEDERAL TRADE COMMISSION DECISION AND ATTORNEY GENERAL OPINION
(Pruden)

Ms. Pruden gave an overview of the case of the North Carolina State Board of Dental Examiners vs. the Federal Trade Commission:

In February of last year, the Supreme Court issued a decision which addressed whether a personal licensing board with licensing members can be held liable for violations of the Anti-Trust Law. The following September, the Attorney General issued an opinion addressing the case. In October of 2015, the Federal Trade Commission staff also issued guidance on this topic. Ms. Pruden stated that the Board should note that Anti-Trust Laws seek to prohibit anti-competitive economic practices. In theory, regulation of being anti-competitive as it restricts competition by certain controls in the market place. State agencies may displace competition for public policy purposes. State agencies cannot be held liable for violating anti-trust laws if the action is taken pursuant to the clearly articulated and permanently expressed state policies to displace competition. Until the North Carolina case, it was widely believed that the same standard applied to state licensing boards such as the RCB and other boards within DCA. The decision of the United States Supreme Court held that a state board with a controlling number of decision makers, who are active participants in the occupation that the board regulates, must meet an active supervision requirement to receive Anti-Trust State Action Immunity.

In the North Carolina Case, the N.C. Board of Dental Examiners was made up of six dentists, one dental hygienist and one consumer member. The Board received complaints of non-dentists providing teeth whitening services to which the Board opened an investigation and eventually issued multiple "Cease and Desist" letters. North Carolina statutes and regulations did not specifically address whether teeth whitening was held within the scope of practices of dentistry. The Board ultimately did not have the authority to issue "Cease and Desist" letters.

The Federal Trade Commission brought an action against the anti-trust laws. The case was eventually heard by the United States Supreme Court. The Attorney General identified broad areas of operation for Board members to act with reasonable conference. These areas include but are:

- 1.) Provocation of ordinary regulations carried out under applicable rules as the process includes public notice, re-justification, and review by The Office of Administrated Law.
- 2.) Individual disciplinary decisions carried out under applicable rules because of due process procedures. Participation of State actors such as the Executive Officer, the Investigators, the Attorney General's Office, House Counsel and Administrative Law Judges.
- 3.) Carrying out acts required by a statutory law as the Legislature has provided that supervision.
- 4.) Actions with competitive facts such as the adoption of safety standards based on objective, expert judgments for measures making information available for consumer's relating, competing products.

The Attorney General also suggested that state boards should be taught to recognize actual anti-trust issues.

Along with the Attorney General's Office, the Department of Consumer Affairs has also recently provided some options. The Attorney General and the Federal Trade Commission opinions both indicate that the controlling number of active market participants implicates the need for active seat supervision not simply a majority of the Board Members. DCA has recognized important lessons from these resources and has been working to assist the Boards in understanding anti-trust issues and identifying market sensitive decisions. The Legal Affairs Department will continue to provide guidance as this area of law continues to develop. Ms. Pruden will be working proactively with the Board pointing out issues as they arise.

Dr. Lewis stated that the RCB was likely not in the sights of the public as much as other boards are.

Ms. Pruden responded that although this issue was not on our radar before, it should not be downplayed just because this particular board does not seem to be as much in the public eye as others. Legal Affairs will definitely be proactive about issues.

Public Comment:

No public comment was received.

8. RCP WORKFORCE STUDY UPDATE/SCOPE OF WORK
(Roth)

President Roth stated the UCSF has done a wonderful job on the Workforce Study in interviewing directors and educators regarding critical respiratory care workforce issues. Some of the key findings that emerged from the interviews included that the majority of directors felt that the new graduates were not fully prepared for work upon graduation and supported establishing the baccalaureate degree as a requirement to enter into respiratory therapy practice. A small number of directors, however, expressed some concerns about the requirement of a baccalaureate degree citing a lack of evidence that the bachelor's degree has an impact on patient outcomes.

President Roth stated not all respiratory care jobs require a bachelor's degree, such as those in the lower acuity areas of the field. He added the gatekeeper of a particular job is the director of the hospital and the scope of work that hospital does relative to respiratory care.

Dr. Lewis commented that the Board, ultimately, needs to make sure patients are protected and served appropriately whether that is with a 2 year degree or a 4 year degree.

Mr. Wagner stated the emphasis is on the educational program. A standard has to be set on the educational institutions where respiratory therapists come out of school and are able to perform at a certain level.

Dr. Lewis stated the goal should be to train the trainers and get those preceptors trained.

President Roth stated he does not believe we have authority over the schools and this is something the Board may need to look at relative to the strategic plan. He also stated that the curriculum is different among the different programs and there is no clinical component in those additional two years of the baccalaureate program. He added, CoARC does not specify the number of clinical hours required for graduation anymore.

Mr. Goldstein stated this brings into question the efficacy of CoARC and whether going forward, it is in itself, an adequate agency to meet the needs of protecting the patients. CoBGRTE is competing with CoARC and advocating a much higher standard.

Mr. Goldstein made a motion that the workforce study proceed with the proposed study option #2 which offers: "Comparative analysis of associate degree vs. bachelor's degree curricula ... in respiratory therapy for differences in course content related to the kinds of topics directors indicated new graduates are not adequately exposed to in their education. Use the same analytical framework to examine the curricula of other professions that have multiple educational pathways to licensure"

M/Goldstein /S/Lewis

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

Unanimous

MOTION PASSED

9. LITTLE HOOVER COMMISSION REVIEW: OCCUPATIONAL LICENSING

(Roth)

President Roth reviewed the meeting held February 4, 2016 with the DCA boards' executive officers, board presidents and the Little Hoover Commission who is reviewing occupational licensing in California. He added there was no decision, at that time, about how the Commission will be moving forward or what the scope of that will look like but he mentioned it is something the Board will need to continue to pay attention to and remain a participant. The next meeting will be March 30, 2016 in Culver City, California.

10. DISCUSSION OF 2015 CALIFORNIA SOCIETY FOR RESPIRATORY CARE (CSRC) POSITION STATEMENT PERTAINING TO CONCURRENT THERAPY

(Roth)

President Roth stated he appreciates the attention to detail on the CSRC's Position Statement pertaining to concurrent therapy. He added it is a thoughtful and well put together paper about how this affects the profession relative to care, assessment, patient advocacy and safety. He asked the Board members if anyone had an objection to including this statement in the Board's newsletter. All members supported the inclusion of the CSRC's statement pertaining to concurrent therapy in the next newsletter.

Public Comment:

Mike Madison, CSRC President gave some history about the position statement stating a paper was already in place and part of the references for that paper had become no longer applicable. As such, CSRC went back and refreshed their references. He added the CSRC is looking for an endorsement from the Respiratory Care Board for this position statement as it adds weight to the principles they abide by concerning patient safety and care.

Vice President Wagner asked Ms. Pruden, Legal Counsel, to look into whether the Board is able to offer a letter of support for this position and what restrictions the Board might have. This item will be placed on a future agenda for further discussion and review.

11. LEGISLATIVE ACTION
(Molina/Nunez)

a. 2016 Legislation of Interest:

Ms. Molina reviewed and provided updates regarding the 2016 Legislation of Interest. The staff recommended positions are as follows:

- SB 66: Career Technical Education
Staff Recommended Position: Watch
- SB 547: Aging and long term care services, supports, and program coordination
Staff Recommended Position: Watch
- SB 1155: Profession and vocation: licenses: military services
Staff Recommended Position: Support
- SB 1334: Crime reporting: healthcare practitioners: human trafficking
Staff recommended Position: Watch
- SB 1348: Licensure applications: military experience
Staff Recommended Position: Watch
- AB 1939: Licensing Requirements
Staff Recommended Position: Watch
- AB 2079: Skilled nursing facilities: staffing
Staff Recommended Position: Support if amended
- AB 2606: Crimes against children, elders, dependent adults, and persons with disabilities
Staff Recommended Position: Support
- AB 2701: Department of Consumer Affairs: boards: training requirements
Staff Recommended Position: Watch

Ms. Molina explained this is the second year of a two year legislative cycle. Some bills have died and are no longer being reported upon while there are some new bills which have been identified as legislation of interest.

SB1155: Requires DCA to work with the Department of Veteran's Affairs to grant a fee waiver for the application and issuance of an initial license to an individual who is an honorable discharged veteran. Staff recommended a position of "Support" as this is in line with what has been done in the past by the Board, as far as expediting the processing of military applications.

AB 2079: The recommended staff position is "Support if Amended" and will depend upon what is presented by the CSRC regarding staffing ratios. This bill may provide the Board with an opportunity for proposed legislation since it is the same subject matter. However, at this point, it is specific to nurses and certified nursing assistants. It may give the Board an opportunity to work with the author if at some point the Board decides to move forward with the ratios.

AB 2606: The recommended position for this bill is "Support" because it is directly in line with the Board's consumer protection mandate. It would require law enforcement agencies to notify the Board immediately if a report of specific crimes (such as: child abuse, corporal injury against the elderly or dependent and hate crimes against the disabled) is made against a person who holds a license.

Dr. Lewis moved to approve the staff recommended positions as presented.

M/Lewis /S/Goldstein

In favor: Early, Goldstein, Hardeman, Lewis, Roth, Wagner
Unanimous
MOTION PASSED

b. 2015/16 Board Sponsored Legislation: AB 923

Ms. Nunez advised the Board that she has continued to work with legislative staff on AB 923 which she expects to be successful this year.

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CLOSED SESSION
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The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 10:15 a.m. and reconvened into Public Session at 11:34 a.m.
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13. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

No public comment was provided at this time.

14. FUTURE AGENDA ITEMS

Future agenda items include the discussion of the CSRC's request for endorsement of their position statement pertaining to concurrent therapy.

ADJOURNMENT

The Public Session Meeting was adjourned by President Roth at 11:45 a.m.

ALAN ROTH
President

STEPHANIE A. NUNEZ
Executive Officer