



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.

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 7, 2016 MINUTES

Dr. Lewis moved to approve the October 7, 2016 Public Session minutes with the minor correction on page 8, line 18 by changing the word "parody" to "parity."

No public comment was received.

M/Lewis/S/Wagner

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

Abstain: Hardeman

MOTION PASSED

EXECUTIVE OFFICER'S REPORT

(Nunez)

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

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

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

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

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

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

Public Comment:

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

REVIEW OF AND POSSIBLE ACTION AFTER CONSIDERATION OF THE RCP WORKFORCE STUDY

(Roth, Wagner)

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

No public comment was received.

FISCAL REVIEW

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

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

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

(a)...

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

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

(a)...

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

balance in the board's contingent fund shall be equal to approximately six months of annual authorized expenditures. ~~If the estimated reserve balance in the board's contingent fund will be greater than six months, the board shall reduce the renewal fee. In no case shall the fee in any year be more than 10 percent greater than the amount of the fee in the preceding year.~~

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

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

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

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

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

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

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

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

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

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

Public Comment:

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

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

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

President Roth restated the motion to pursue legislation relative to a fee increase as outlined in Scenario 2 (beginning on July 1, 2018 the renewal fee shall increase to \$330 with the reserve balance

to equal approximately 6 months of annual authorized expenditures) giving the Executive Committee authority to make changes throughout the process as needed.

M/Lewis/S/Hardeman

In favor: Early, Franzoia, Goldstein, Lewis, Romero, Roth

Abstain: McKeever, Wagner

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

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

M/Roth/S/Goldstein

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

MOTION PASSED

**CONSIDERATION 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**

(Roth)

Ms. 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, all public comments received, and the draft Final Statement of Reasons that addressed the public comments. President Roth commended Board staff for the complete and accurate presentation of the public comments and the Board's responses thereto in the Final Statement of Reasons.

President Roth 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 non-substantive changes.

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

M/Roth/S/Lewis

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

MOTION PASSED

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

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

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

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

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

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

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

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

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

No public comment was received.

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

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

- SB 27: Professions and Vocations: licensees: military services
Staff Recommended Position: Watch
- SB 227: Vocational nurse: feeding tube services: neurodegenerative conditions.
Staff Recommended Position: Watch
- SB 247: Licensing requirements
Staff Recommended Position: Watch
- SB 496: Department of Consumer Affairs: regulatory boards: removal of board members
Staff Recommended Position: Watch

- SB 572: Healing arts licensees: violation: grace periods
Staff Recommended Position: Oppose
- SB 796: Healing arts boards (RCB Sunset Extension Bill)
Staff Recommended Position: Support
- AB 208: Deferred entry of judgment: pretrial diversion.
Staff Recommended Position: Oppose
- AB 349: Department of Consumer Affairs: applications for licensure: special immigrant visas
Staff Recommended Position: Watch
- AB 654: Pediatric home health care
Staff Recommended Position: Support if Amended
- AB 703: Professions and vocations: fee waivers
Staff Recommended Position: Watch
- AB 827: Department of Consumer Affairs: high skill immigrants: license information
Staff Recommended Position: Watch
- AB 1005: Department of Consumer Affairs
Staff Recommended Position: Oppose Unless Amended

Vice President Wagner moved to accept the staff recommended positions.

No public comment was received.

M/Wagner/S/Goldstein

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

MOTION PASSED

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

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

FUTURE AGENDA ITEMS

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

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

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

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

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.

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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.

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ADJOURNMENT

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

ALAN ROTH
President

STEPHANIE A. NUNEZ
Executive Officer