



PUBLIC SESSION MINUTES

Friday, November 6, 2015

**1625 North Market Blvd.
South Building, Room S-102
Sacramento, CA 95834**

Members Present: Alan Roth, MS MBA RRT-NPS FAARC, President
Mary Ellen Early
Rebecca Franzoia
Michael Hardeman
Ronald Lewis, M.D.
Laura Romero, Ph.D.
Thomas Wagner, BS, RRT, FAARC

Staff Present: Norine Marks, Supervising Attorney
Ravinder S. Kapoor, Staff Attorney
Stephanie Nunez, Executive Officer
Christine Molina, Staff Services Manager

CALL TO ORDER

The Public Session was called to order at 10:02 a.m. by President Roth. A quorum was present.

PUBLIC COMMENT

Ms. Nunez explained that public comment would be allowed on agenda items, as those items are discussed by the Board during the meeting. She 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. Public comment may be limited in order to allow sufficient time for the Board to conduct its scheduled business.

There was no public comment.

APPROVAL OF MAY 15, 2015 MINUTES

Dr. Lewis moved to approve the May 15, 2015 Public Session minutes as written.

M/Lewis /S/Wagner

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

Abstain: Franzoia,

MOTION PASSED

APPROVAL OF JUNE 23, 2015 MINUTES

Dr. Lewis moved to approve the June 23, 2015 Public Session minutes as written.

M/Lewis /S/Hardeman

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

Unanimous

MOTION PASSED

EXECUTIVE OFFICER'S REPORT

(Nunez)

a. Continuing Education Hours Increase Effective July 1, 2015:

Ms. Nunez reminded the Board of the implementation of increased continuing education hours. Licensees expiring on or after July 31, 2017 are required to complete 30 hours of continuing education. Ms. Nunez advised the Board that since July of this year, notices regarding the increase are being included with all renewed licenses to ensure adequate time (a full renewal cycle) for licenses to meet the increased requirement.

b. Unauthorized Practice of Respiratory Care Notice:

Ms. Nunez shared the Education Advisory Notice that the RCB intends to mail next week. She stated this is an attempt to halt a recurring trend of sub-acute facilities using LVN's and other unlicensed personnel to care for ventilators patients.

Ms. Nunez introduced Mr. John Brook, Acting Executive Officer of the Board of Vocational Nursing & Psychiatric Technicians (BVNPT), and stated she and Mr. Brooks are in agreement that this issue has a lengthy history which was believed to be resolved around 2005 or 2006 in which it was made known that LVN's were not to provide respiratory care. Both boards would like to get together to work out a resolution jointly before other avenues are explored. In the meantime, because of a paramount concern for patient safety, the education advisory mailer will be sent out in accordance with existing law, including the possibility of a citation and fine. Ms. Nunez further stated she was contacted by the Medi-Cal Sub-acute Unit from the Department of Health Services with concerns on the same issue.

Mr. Wagner asked who would be the recipients of this advisory.

Ms. Nunez stated it will be going out to all sub-acute facilities of which there are approximately 150.

Dr. Lewis questioned what specific objections were voiced by the Department of Health Services, Medi-Cal staff. Ms. Nunez responded that generally there was a concern that LVN's were performing respiratory care functions. She added, some days LVNs would perform nursing duties while other days the LVN may be responsible entirely for respiratory care duties.

Public Comment:

Mr. John Brook, Acting Executive Officer, BVNPT, stated that he has been in contact with Ms. Nunez for the past two weeks concerning the issue of LVN's possibly performing duties outside of their scope. He indicated that he believes that there may be some overlap on some of the items listed on the notice which are indicated as being purely within the purview of Respiratory Care Practitioners. He stated that perhaps there may be certain circumstances in which LVN's could perform some of these functions on a limited basis but that LVN's should not be taking on respiratory duties as part of a shift. He also expressed his concerns on the items brought to Ms. Nunez's attention by the Medi-Cal Staff of the Department of Health. Mr. Brook proposes that the two boards work jointly to better define the scope of practice for licensed vocational nurses to better determine what LVNs can or cannot do within the respiratory care professional arena.

Mr. Wagner inquired as to the length and breadth of education the LVN's have in providing respiratory care. Mr. Brook indicated that he could not answer that question but questioned if possibly there were some functions that LVNs could perform under the direction of an RN or MD.

President Roth then asked Mr. Brook if the title of LVN was the same as that of an LPN.

Mr. Brook indicated that it was a different designation.

Dr. Romero questioned, since there were concerns from Medi-Cal, if there were any implications at all surrounding the Affordable Care Act (ACA) and if there was any type of impact or concerns that the Board might have considering that there are populations served under that Act.

Ms. Nunez responded that RCB does not currently know of any, but it is definitely a concern that patients are going to receive substandard care.

c. Sunset Review 2016/2017

Ms. Nunez stated that every four years, the Respiratory Care Board undergoes Sunset Review. With the Respiratory Care Act set to expire in 2018, during 2016 the Board will be required to compile a rather lengthy report which provides data on the Board's workload, as well as pending issues and accomplishments. This report goes to the Legislature which then compiles a list of questions and/or concerns on how the Board is operating and holds hearings in which it is hoped that legislation will be introduced to extend the existence of the RCB for another four years.

Dr. Lewis asked if any roadblocks or issues were expected with this Sunset Review. Ms. Nunez stated that she did not expect any and that the RCB has always done a very good job and has always put consumers first, which has been a paramount issue. She also mentioned that there will be other issues that will be relevant this time which involve military legislation among others, but that all of the implementation needed has already been addressed. She stated that the Board has always been very responsive to military members regardless of legislation. Ms. Nunez added, there may be other items to discuss and explore further.

Mr. Kapoor asked if the Board has a Sunset Review Committee. Ms. Nunez responded that they generally utilize the Executive Committee comprised of the President and Vice President.

There was no public comment.

2013-2016 STRATEGIC PLAN REVIEW

(Roth)

President Roth stated, at the previous Board meeting there was vigorous discussion concerning items relative to the strategic plan that were achievable as well as the longer range goals for the Board and the profession. He believes the Board has done a very good job focusing on what is important relative to patient safety and the goals of the Board moving forward. He also stated that he looks forward to input from Board Members as to what the Board will look like in the next three years. President Roth stated he believes the research project currently being performed by UCSF will help guide the Board in future decision making.

Ms. Nunez called attention to page six of the Strategic Plan and indicated that she has updated each goal to bring the Board up to speed on the current status of each. She stated that the Board plans on completing a new strategic plan in 2017.

Dr. Romero commented that the Board and Department have done a very good job. She asked for clarification of the meaning of each type of indicator used next to each goal.

Ms. Nunez explained the legend as follows:

- ✓ = Complete
- = Not Complete
- WS** = Awaiting Work Force Study Information

Ms. Nunez pointed out that the work force study is in the process of researching item #2.6 to see if continuing education hours need to be increased further and if there should be a restriction on the extent to which CE courses can be delivered on-line rather than in person.

President Roth added that there was much discussion concerning the number of CE hours required for other professional boards relative to those required by the Board and that this information would help the Board get more “in-line” with other professions.

There was no public comment.

ENFORCEMENT PERFORMANCE MEASURES AND STATISTICS

(Nunez)

Ms. Nunez reviewed the first section of the Quarterly Statistics for this Fiscal Year and stated the Board is on target for everything with the exception of Formal Discipline which goes through the Attorney General’s Office. She added that this is still a vast improvement. Ms. Nunez further discussed the Annual Report which is also listed on DCA’s website and provides additional statistics.

President Roth commended Ms. Nunez and her staff for working hard to achieve these goals. He highlighted improvements in the categories of “Intake & Investigation” and “Intake” which is the average cycle time from complaint to the date the complaint was assigned to an investigator. He indicated that those were very aggressive goals and that staff worked very hard to have high numbers and get cases moving along.

Dr. Lewis requested clarification on how to read the Summary of Enforcement Activity. He questioned that in the “Consumer Complaint Intake” section it lists 326 cases received and 307 of those moved onward to investigation. Additionally, he inquired if he was correct in his understanding that all 534 complaints in the “Conviction /Arrest” section moved forward to investigation.

Ms. Nunez replied that they moved on to investigation or closure.

Dr. Lewis inquired if this report shows the Board receives less than 900 complaints in volume between these two areas per year.

Ms. Nunez confirmed it does.

President Roth questioned whether there has been a decrease in the number of applicants because of the new RRT requirement for licensing. He added the NBRC's last quarter review indicated the pass rate has edged up to 68% for those taking the exam for the first time.

Ms. Nunez replied a projection was done on the impact and it was believed there would be a drop in applicants. She continued that it now seems there will be a less significant drop than initially believed however, more data is needed before making an assessment.

Ms. Molina reported, according to the Board's Licensing Technician, from July 1 to October 30, she has issued 500 new licenses. Ms. Molina believes because the exams have posed additional difficulty, there were more applications pending at the end of June than the Board generally has in that timeframe. However, those individuals seem to have since passed the secondary portion of the exam resulting in the Board licensing more people in the first four months of this year.

There was no public comment.

RCP WORKFORCE STUDY

(Roth)

President Roth reviewed the progress on the work force study being conducted by UCSF covering the goals and the proposed activities of the study. President Roth stated the advisory group for this study has already accomplished six goals towards their extended project.

UCSF research is looking into specifics about the kinds of continuing education that respiratory requires in order to be viewed as competent and have continued competency relative to their scope of practice.

Because of the multiple iterations of the research, UCSF has proposed a revised timeline to complete the study. UCSF plans to come to future meetings to provide updates in the process.

Dr. Lewis stated it looks like they will delay interviews with the program directors and inquired when the Board may receive a full update.

President Roth estimated that within the next nine months the Board should receive more information. He added the two programs for respiratory care that have been approved for baccalaureate programs in California as the pilot project will be starting soon; one in the fall of 2016 and one in the spring of 2017. Both schools have yet to establish admission criteria and are waiting to identify the makeup of the class.

Dr. Romero stated it is great to see that the core advisory group has been established and inquired who these six individuals are.

President Roth indicated he was one of the advisors along with Rick Ford, UCSD; Ray Hernandez, Skyline College; Mike Madison, CSRC President, and Joe Garcia from Doctor's Medical Center.

Dr. Romero questioned why no females were on the advisory committee.

Ms. Nunez explained the respiratory care field is predominately male at the level of director and above. They were looking for key experts with the education and “hands on” experience to assist UCSF in this study. She added she does not believe there are any gender specific issues as part of the study

There was no public comment.

CONSIDERATION OF CSRC REQUEST: MANDATE HALF OF CONTINUING EDUCATION BE ACCUMULATED THROUGH LIVE CONTACT HOURS

President Roth stated the Board was looking at whether or not there needed to be a quality of continuing education that is currently not being met and added there are several groups around the State that have put out continuing education programs that are less than optimal. It is a thought that having live contact CEUs would allow for debate, interaction and knowledge transfer. The advisory group for the UCSF study is looking into exactly what, as a profession, should be required for continuing education. President Roth suggested this item be discussed further after the UCSF study is complete and there is more information in this area.

Mr. Hardeman commented, since continuing education is often being completed during the RCP’s own time as opposed to on the job, it is more convenient to offer the choice of online training.

President Roth replied opportunities are available at the institutions where RCPs work.

Ms. Nunez stated that was a good point and suggested as the Board move forward developing the criteria for continuing education, it keep in mind that not all RCP’s work in facilities and have those opportunities. Possible allowance such as extra credit for those doing the live courses might be included.

Ms. Early stated one of the other things that needs to be taken into consideration is that a computer class does not offer the opportunity for hands on training and demonstration with frequently changing equipment.

Dr. Lewis stated, in medicine most of the CE credits can be taken online and do not necessarily need to be hands on. He added however, as medical technology advances, so will the need for more on-site training. We need to find a way to make it easier and less of a financial burden to obtain the hands on training needed.

Discussion ensued.

Public Comments:

Written testimony was received by Michael Monasky highlighting reasons why he believes the CSRC’s request to have at least half of the required CE credits earned for license renewal be “live contact hours” should be rejected.

FISCAL REVIEW

Ms. Nunez highlighted the increase in expenditures of about \$340,000 stating these are primarily onetime costs. Of this year's budget, these include \$117,000 towards the UCSF Workforce Study; \$98,000 towards BreEZe and \$80,000 for Division of Investigation. Overall, the fund condition is lower but remains steady. She added there is still a reserve just not as large as in past years because of these one-time costs.

Dr. Romero inquired if the Board's redesign of the website was included in this budget and when that was expected to take place.

Ms. Nunez replied the website redesign would be conducted by staff and expects it to be complete by the end of 2016.

LEGISLATIVE ACTION (Molina/Nunez)

a. 2015 Legislation of Interest:

Ms. Molina reviewed and provided updates regarding the 2015 Legislation of Interest. The Board's positions are as follows:

- AB 12: State government: administrative regulations: review
Status: 8/27/15: Referred to Appropriations suspense file. May become a 2 year bill
Board's Position: Watch
- AB 85: Open Meetings
Status: Vetoed by the Governor
Board's Position: Opposed
- AB 333: Healing Arts: continuing education
Status: Signed by the Governor, Chapter 360, Statutes of 2015.
Board's Position: Watch
- AB 507: Department of Consumer Affairs: BreEZe system: annual report
Status: Hearing before Senate BP&ED cancelled at the request of the author. May become a 2 year bill
Board's Position: Watch
- AB 611: Controlled Substances: prescription reporting
Status: Hearing before the Assembly cancelled at the request of the author. May become a 2 year bill.
Board's Position: Watch
- AB 860: Sex crimes: professional services
Status: Referred to Senate Appropriations suspense file. May become a 2 year bill.
Board's Position: Watch
- AB 1060: Cancer clinical trails
Status: As amended, no longer a bill of interest to the Board
Board's Position: Watch
- SB 390: Home health agencies: skilled nursing services
Status: 4/14/15 hearing before Senate Health cancelled at the request of the author. May become a 2 year bill.
Board's Position: Watch
- SB 467: Professions and Vocations
Status: Signed by the Governor, chapter 656, Statutes of 2015
Board's Position: Watch
- SB 800: Committee on Business, Professions and Economic Development

Status: Signed by the Governor, Chapter 426, Statutes of 2015.
Board's Position: Watch

b. 2015 Board-Cosponsored Legislation

Ms. Nunez reviewed Board Cosponsored Legislation:

SB 525: Respiratory care practice
Status: Signed by the Governor, Chapter 247, Statutes of 2015.
Board's Position: Support

AB 923: Respiratory care practitioners
Status: has become a 2 year bill
Board's Position: Support

Ms. Nunez stated the Board is still working on AB 923 and she has had numerous meetings with the Assembly Business and Professions Committee regarding this bill. One of the sections being removed (which received a lot of objection) deals with the posting of arrests on the Board's website. The Assembly B&P Committee agreed to submit this issue as crosscutting for all DCA boards and bureaus to determine if a resolution such as public notice might be achieved. Ms. Nunez added that the other provisions of the bill are on track.

ATTORNEY GENERAL LEGAL OPINION: SPIROMETRY BY MEDICAL ASSISTANTS

Ms. Nunez reviewed the legal opinion stating a medical assistant may lawfully perform spirometric pulmonary function testing if the test is a usual and customary part of the medical practice where the medical assistant is employed. Ms. Nunez also noted that this opinion is not binding,, but does carry weight.

Mr. Wagner stated he understands the difficulty with this issue and expressed that his concern is those doing the spirometry are not doing it under the appropriate criteria. He is concerned that many of these tests are being put into the record as fact when they are actually not being performed properly. Mr. Wagner questioned who will police them to make sure the tests are being done properly.

Discussion ensued.

Dr. Lewis stated he is not sure how much more energy should be put into this because as he reads the opinion, the last line states "and supervision are satisfied." If it is not an isolated test without supervision and the entity is satisfied with the training and supervision, he does not see an issue.

President Roth agreed that the physician in charge needs to have confidence in the medical assistant but that is not always the case. He gave an example of his last physical where the medical assistant performing the spirometry did not do the test correctly. He further stated that he feels that the Board needs to broaden the knowledge base to the physicians through either an educational effort or some other new technology to be more aware of what spirometry actually means.

Dr. Lewis suggested using one of the avenues of communication already at hand, such as the Medical Board's newsletter, and include a reminder to physicians that they may be held responsible for any negative outcome due to improper education or oversight.

Ms. Nunez inquired if Dr. Lewis would be interested in communicating with the Medical Board.

Dr. Lewis responded he would have no problem opening an avenue of conversation with the Medical Board and added this is all about public outreach and that there may be many ideas that have not been thought of yet.

Dr. Romero then stated that she agrees with Dr. Lewis in that communication may be the answer to this issue.

Ms. Franzoia questions, for clarification, if the Board is asking that Dr. Lewis contact the Medical Board requesting they place a reminder in their newsletter that whoever signs off on these tests should be responsible and aware of the consequences.

Dr. Lewis stated it is not so much of a request, as it is opening up a dialog.

Board discussion ensued.

There was no public comment.

President Roth moved to authorize Dr. Lewis to make contact with the Medical Board and open a dialog pertaining to educational information in regards to spirometry and bring any communication back to the Board for discussion.

The motion was seconded by Mr. Wagner.

M Roth/S Wagner

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

Unanimous:

MOTION PASSED

RCP STAFFING RATIOS/VENTILATOR PATIENTS

President Roth stated that currently there are staffing ratios in nursing that relate to acuity and the number of nurses to patients in a particular unit like the ICU. Different units of a facility or hospital have different ratios in each. He explained he wanted the Board to have a discussion as to whether or not they could come up with a way in which therapists across the State could view the acuity of a person on mechanical ventilation both within and outside the ICU. He further explained, unlike nurses who are assigned to a smaller area or unit of responsibility, therapists are commonly assigned to an entire floor of a hospital or even several floors. The result is that individuals in respiratory care administrative functions currently are not aware of the best way in which to staff departments for those areas that require both mechanical ventilation and other activities.

Mr. Wagner stated, having been a respiratory therapy department administrator for almost 40 years, he would in his departments, not normally assign more than 4 acute ventilators to any therapist for an 8 hour shift, 5 if they were "long term stable" and stated his facility used the AARC's Uniform Reporting Guidelines to figure out the acuities for each of the patients which has turned out to be much of the standard. He added that this also depends upon the other types of procedures that the patient is receiving, how frequently the ventilator checks are being administered, and what is required of a therapist during a ventilator check. He believes that they have found a safe and effective staffing level to be no more than 4 acute ventilators patients per therapist.

Ms. Nunez inquired if currently there is an average number of patients per therapist for stable patients.

Mr. Wagner responded that it would be 5 stable ventilator patients per therapist because of the many procedures involved in a ventilator check.

Dr. Lewis then inquired if any of this equates into a time. He questioned if it is by CPT Code where it can tell you how much time is spent on that activity so that data can be gathered to assist in telling how much a therapist can be assigned.

Mr. Wagner answered that it was not by CPT Code but by the AARC's Uniform Reporting Guideline. In it there is a manual that describes the time required to perform each of the specific duties required of a respiratory therapist to perform ventilator care. It gives both a general timeframe or suggests that a time study be performed on a therapist performing all of the duties of a ventilator check. Mr. Wagner stated he agrees that there should be a standard.

Ms. Franzoia inquired, if a therapist has 4 acute patients, do they have any other patients?

Mr. Wagner responded that generally, they would not.

Discussion ensued.

Mr. Wagner stated it would be difficult to dictate a number of ventilator patients to therapists and should be left up to the department directors based on the acuities of the ventilator patients.

Ms. Early stated the staffing ratio developed for RN's was through the State Legislature. She believes it may have been an organization like the California Nurses Association that wrote the bill and got a legislator to carry it. It would be a similar process for therapist: to get a statewide organization to put something together and find a member of the Legislature to carry it. She added she believes this is beyond the purview of this Board and should be something taken up by a professional organization.

Dr. Lewis agreed but stated he believes that Board should set minimum standards if legislation is introduced by an organization.

Mr. Kapoor, Legal counsel, stated the Legislature would have to authorize the Board to regulate those ratios established. Further, a statement made by the Board would not be enforceable. He recommended, if the Board feels that ratios are something that need to be regulated, the Board pursue a statutory change. A guideline or policy statement might not be a good use of time.

Mr. Kapoor reviewed some of the options: the Board could make a motion to direct staff to put together a proposal, authorize staff to seek input, put this topic on a future agenda while getting more input, send the topic to a committee; or authorize staff to move forward on draft language to bring to a future board meeting.

Ms. Franzoia suggested staff look into whether other states have developed staffing ratios and how they established those ratios.

Mr. Wagner moved to have staff request an opinion and recommendation from the practitioners and the CSRC in regards to ventilator therapist ratios in acute and sub-acute care facilities.

The motion was seconded by Ms. Franzoia.

M Wagner/S Franzoia

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

Unanimous:

MOTION PASSED

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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 11:57 a.m. and reconvened into Public Session at 12:34 a.m.

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ELECTION OF OFFICERS FOR 2016

a. Vice President

President Roth opened the floor for nominations for Respiratory Care Board Vice President.

A movement to nominate Mr. Wagner for RCB Vice President was made by Ms. Early and seconded by Mr. Hardeman. No other nominations were made.

No public comment.

M/Early /S/Hardeman

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

Unanimous

MOTION PASSED

b. President

President Roth opened the floor for Nominations for Respiratory Care Board President.

A movement to nominate Mr. Roth for RCB President was made by Dr. Lewis, and seconded by Dr. Romero. No other nominations were made.

No public comment.

M/Lewis/S/Romero

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

Unanimous

MOTION PASSED

2016 MEETING DATES: CALENDAR

The following Public Meetings were scheduled for 2016:

March 11, 2016 in San Diego, California
June 24, 2016 Teleconference Meeting
October 7, 2016 in Sacramento, California

PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA

There was no public comment.

FUTURE AGENDA ITEMS

President Roth requested that if available, information and recommendations from the CSRC with regards to ventilator to therapist ratio, be included on the next agenda.

ADJOURNMENT

The Public Session Meeting was adjourned by President Roth at 12:52 p.m.

ALAN ROTH
President

STEPHANIE A. NUNEZ
Executive Officer