



**Physician Assistant Committee**

2005 Evergreen Street, Suite 1100, Sacramento, CA 95815

Telephone: (916) 561-8780 FAX: (916) 263-2671

Web site: [www.pac.ca.gov](http://www.pac.ca.gov) Email: [paccommittee@mbc.ca.gov](mailto:paccommittee@mbc.ca.gov)

**November 18, 2010**

**Physician Assistant Committee  
2005 Evergreen Street – Hearing Room 1150  
Sacramento, CA 95815  
9:15 A.M. – 5:00 P.M.**

1. Call to Order by Chairman

Chairman Klompus called the meeting to order at 9:20 a.m.

2. Roll Call

Staff called the roll. A quorum was present.

Committee Members Present: Steve Klompus, PA  
Rosslynn Byous, PA, Ph.D.  
Cristina Gomez-Vidal Diaz  
Reginald Low, M.D.  
Shaquawn D. Schasa  
Steven Stumpf, Ph.D.  
Shelia Young

Staff Present: Elberta Portman, Executive Officer  
Kurt Heppler, Staff Counsel, Dept. of Consumer Affairs  
(DCA)  
Glenn Mitchell, Regulation and Lead Licensing Analyst  
Dianne Tincher, Enforcement Analyst  
Lynn Forsyth, Staff Services Analyst

3. Approval of Minutes of February 18, 2010 Meeting

The February 18, 2010 minutes were approved as written.  
(m/Byous, s/Dr. Low, motion passes)

Approval of Minutes of July 26, 2010 Meeting

After a brief discussion, the July 26, 2010 minutes were approved with the following amendment:

Motion to amend the July 26<sup>th</sup> minutes to attach to Item 15 the Briefing Paper on Title 16 of the California Code of Regulations, Section 1399.530, as submitted by legal counsel.  
(m/Young, s/Schasa, motion passes)

4. Public Comment on Items not on the Agenda

There were no comments received from the public for this agenda item.

5. Reports

a. Chair's Report

Chairman Klompus introduced Kurt Heppler, legal counsel for the Department of Consumer Affairs, who is temporarily tentatively assigned to the PAC in the absence of Claire Yazigi while on leave.

b. Executive Officer's Report

Ms. Portman reported that due to current budget conditions, the Department requested that every board to identify a 5% savings for the 2010/2011 fiscal year within the personnel services budget line item. Ms Portman stated that the requested 5% has been identified and communicated to DCA.

Ms. Portman stated that the PAC meeting agenda and packet is now available on the PAC website, in order to be more transparent and accessible to consumers and licensees.

Ms. Portman reported that staff continues to be busy with licensing, enforcement and the budget. Ms. Portman also reported she and Glenn Mitchell met with Richard Wonacott, Deputy Director, Division of Legislative and Policy Review, to discuss three legislative proposals for 2011.

Ms. Portman reported that she has been asked to participate on the Department's Policy Review Committee as a representative of a healing arts board.

Ms. Portman reported that Dianne Tincher is working on improvements to the PAC probation program. Ms. Portman also reported that Dianne has developed an initial contact letter for each probationer.

Ms. Portman reported that each board is tracking their performance measures for enforcement processing. All of the Performance Reports will be posted on the DCA website.

In the area of personnel, Ms. Portman reported the Consumer Protection Enforcement Initiative positions will not be filled at this time due to the current hiring freeze.

c. Licensing Program Activity Report

Between July 1, 2010 and October 2010, 241 physician assistant licenses were issued. As of October 1, 2010, 7,838 physician assistant licenses are renewed and current. Currently there are a total of 182 California approved training programs

d. Diversion Program Activity Report

As of October 1, 2010, the Diversion Program has 24 participants, 5 self-referred participants and 19 Committee referrals. There have been 97 participants since program implementation in 1990.

e. Enforcement Program Activity Report

Between July 1, 2009 and September 30, 2010 there were 75 pending complaints, 27 pending investigations, 42 current probationers and 25 pending cases at the Office of the Attorney General.

6. Department of Consumer Affairs' Report

Kim Kirchmeyer, Department of Consumer Affairs' Deputy Director, reported that on August 31<sup>st</sup> the Department received a Governor's directive to cease hiring employees. The directive stated that there may be limited circumstances where exceptions from the directive may be necessary for the preservation, protection of human life and safety, emergency disaster response, or the provision of 24 hour medical care. Only the most critical exceptions will be approved, and to date the department has had 5 exceptions granted. Ms. Kirchmeyer stated that personnel employed within the Department of Consumer Affairs are permitted to transfer internally.

On behalf of the Department, Ms. Kirchmeyer thanked the Committee for allowing the Executive Officer to go forward with proposed regulations regarding SB 1111. If approved, these regulations will allow the Executive Officer to expedite the investigation and prosecution process.

7. Presentation Regarding Committee Member's Role in Regard to Representations Made to the Public and Scope of Department of Consumer Affairs Legal Representation of the Committee

Staff Counsel, Kurt Heppler, gave a brief overview of Members' roles and legal representation of the Committee. He stated that the Committee itself (as a group) has the power to adopt regulations, disciplinary guidelines and establish policy. In certain circumstances that power may be granted to an individual member.

Staff Counsel, Kurt Heppler, explained that when legal issues arise the counsel's allegiance is limited to the Committee itself, not to individual members.

8. Consideration of Proposal to Amend Regulations Regarding Physician Assistant Training Program Approval by the Physician Assistant Committee (Article 3 of Division 13.8 of the California Code of Regulations)

Staff Counsel Kurt Heppler, stated that the purpose of regulation is to implement specific statutes. The Committee has legal authority to adopt, implement, interrupt, make specific

or otherwise carryout the provisions of a statute.

Mr. Heppler, stated that Business and Professions Code Section 3513 states, "Physician Assistant training programs that are accredited by a national accrediting agency approved by the Committee shall be deemed approved by the Committee under this section". Mr. Heppler stated that the Committee then adopted §1399.530(b) stated, "those educational programs accredited by the Accreditation Review Commission on Education for the Physician Assistant ("ARC-PA") shall be deemed approved by the Committee. Nothing in this section shall be construed to prohibit the committee from disapproving an educational program which does not comply with the requirements of this article. Approval under this section terminates automatically upon termination of an educational program's accreditation of ARC-PA."

Mr. Heppler stated that it is not the role of the Committee to provide PA training programs a "safe harbor" or "shelter" for civil litigation. The Committees' primary role is consumer protection.

During the public comment portion of this item, Michael De Rosa of Samuel Merritt University, stated that the current regulation conflicts with the new national accrediting standards. He added that he also believes that PA training programs may be in compliance with the national accreditation standards and perhaps are out of compliance with the PA regulations.

After a discussion, a motion was made to create a sub-committee consisting of interested parties, educators, committee members, and staff counsel to present proposals to the Committee at the next meeting.  
(m/Dr. Low, s/Stumpf, motion passes)

9. Consideration of Proposal to Amend Regulations Regarding Requirements for Preceptors in Training Programs. (California Code of Regulations 1399.536)

After a brief discussion it was decided that this would be revisited within the previous item and discussed at the next meeting.

10. Nomination and Election of Physician Assistant Committee Officers

Ms. Young made a motion to nominate Steven Klompus as Chairperson. Motion was carried to elect Mr. Klompus as Chairman for 2011.  
(m/Young, s/Diaz, motion passes)

Ms. Byous made a motion to nominate Shelia Young as Vice-Chairperson. Motion was carried to elect Ms. Young as Vice-Chairperson for 2011.  
(m/Byous, s/Diaz, motion passes)

11. Approval of Passing Score for PA Initial Licensing Examinations and 2011 Dates and Locations for PA Initial Licensing Examination

Discussion ensued and a motion was made and seconded to approve the licensing examination scores and exam site locations for 2011.  
(m/Schasa, s/Stumpf, 1 abstention, motion passes)

12. Report of the Department of Consumer Affairs' July 27<sup>th</sup> Training Day

Ms. Schasa reported that the Department of Consumer Affairs' Training Day was conducted on July 27<sup>th</sup> at the Sacramento Public Library and presented by Director Brian Stiger. Ms. Schasa stated that the training was based in an open forum and covered DCA's roles and functions as well as DCA's goals and expectations from all committee members. Ms. Schasa also reported that the training was a great refresher course on expectations as members and an opportunity to interact with other members.

13. Report on Committee's Strategic Plan Accomplishments

Ms. Portman reported that the strategic plan objective for increased licensing fees was reviewed and it was determined that there is no current need to request a fee change. A regulation proposal is being processed to require Diversion program participants to pay their monitoring costs. Ms. Portman also reported that the current Physician Assistant application was recently revised to require the applicant to submit both the application fee and the initial license fee at the time the application is first submitted. This process reduces application processing times.

Ms. Portman reported that regarding the strategic plan objective for enforcement, an enforcement process flowchart has been posted on the website. The flowchart will provide information to consumers on how complaints are processed. The PAC is working on several regulations to enhance the enforcement program. Ms. Portman also reported that licensees are now required to report any convictions at the time they renew their license.

Ms. Portman reported that regarding the strategic plan objective for education and outreach, the PAC has made three visits to physician assistant training programs to provide and discuss licensing requirements, laws, regulations and other information of interest to the students.

Ms. Portman reported that regarding the objective for administrative efficiency, the PAC web site is constantly being enhanced and now includes more disciplinary information in order to inform interested parties, including consumers, and provide transparency.

14. Legislation of Interest to the Physician Assistant Committee

SB 294, SB 389, SB 1069, AB 471, AB 1310, AB 2386, AB 2699

The current status of the following bills was discussed:

SB 294, Authored by Negrete McLeod

Chaptered by Secretary of State. Chapter 695, Statutes of 2010

Among other things, this bill will make the Physician Assistant Committee inoperative on January 1, 2013 and repealed on January 1, 2014.

SB 1069, Authored by Senator Pavley

Chaptered by Secretary of State. Chapter 512, Statutes of 2010  
This law makes changes to the Physician Assistant Practice Act regarding supervision of PAs, and authorizes a PA to perform physical exams and other specified medical services, and sign and attest to any document evidencing those examinations or other services. It also makes changes to other codes regarding performance of examinations.

AB 2699, Authored by Assembly Member Bass,  
Chaptered by Secretary of State. Chapter 270, Statutes of 2010  
This bill provides until January 1, 2014, an exemption from the licensure and regulation requirements for a health care practitioner (including PAs), who offers or provides health care services through a sponsored event. The PAC staff is working with DCA and other interested parties to implement this bill.

15. **1:00 PM Regulations Public Hearing**

Regulation hearing on Title 16, Division 13.8 of the California Code of Regulations, Section 1399.547 – Notification to Consumers

This proposal would implement Business and Professions Code Section 138 by requiring physician assistant licensees to notify consumers that they are licensed by the Physician Assistant Committee.

Business and Professions Code Section 138 requires that every board within the Department of Consumer Affairs adopt regulations requiring its licensees to provide notification to their customers that the practitioner is licensed by the state.

The regulatory hearing was called to order at 1:00 p.m. by Chairman Klompus. A full quorum was present. There was no oral or written testimony received. The hearing was closed at 1:10 p.m.

A motion was made to adopt the proposed regulatory changes to Title 16, Division 13.8 of the California Code of Regulations as described in the notice published in the California Regulatory Notice. The Committee also moved to authorize the Executive Officer to make non-substantive changes as may be necessary to finalizing the regulation's adoption. (m/Young, s/Schasa, motion passes)

16. **1:15 PM Regulations Public Hearing**

Regulation hearing on Title 16, Division 13.8 of the California Code of Regulations, Sections 1399.503, 1399.507.5, 1399.523, 1399.523.5, 1399.527.5 - Consumer Protection Initiative and Enhancements to Enforcement Program

This proposal would make specific regulatory changes to enhance the Committee's mandate of consumer protection.

This proposal would delegate authority to the Executive Officer the ability to accept default decisions, to approve settlement agreements for revocation, surrender, default decisions, or interim suspension of a license.

This proposal would authorize the Committee to order an applicant for licensure to submit to a physical or mental examination if it appears that the applicant may be unable to safely perform the duties and functions of a physician assistant due to physical or mental illness affecting competency. Additionally, if after receiving the evaluation report the Committee determines that the applicant is unable to practice safely, the Committee may deny the application.

This proposal would also require that in specific cases of a licensee having sexual contact with a patient or any finding that a licensee has committed a sex offense, or been convicted of a sex offense, a proposed decision would contain an order revoking the license. The proposed order could not contain an order staying the revocation of the license.

Additionally, this proposal would define required disciplinary action to be taken by the Committee against registered sex offenders who are applicants or licensees.

The proposal would, in addition to conduct described in Business and Professions Code Section 3527, define "Unprofessional Conduct" as prohibiting the inclusion of provisions in civil dispute settlement agreements prohibiting a person from contacting, cooperating with, filing, or withdrawing a complaint with the Committee.

The definition of "Unprofessional Conduct" would also include failure of the licensee to provide lawfully requested documents; the commission of any act of sexual abuse or misconduct; failure to cooperate with an investigation pending against the licensee; failure to report an indictment, charging a felony, arrest, conviction of the licensee; failure to report any disciplinary action taken by another licensing entity or authority; or failure to comply with a court order issued in the enforcement of a subpoena mandating the release of records to the Committee.

The regulatory hearing was called to order at 1:15 p.m. by Chairman Klompus. A full quorum was present.

A written comment was received from Joel S. Moskowitz, Attorney at Law. Mr. Moskowitz wrote in opposition to the proposed amendment to Section 1399.503. He stated that the measure, as drafted, does not conform to the Administrative Procedure Act. He added that the summary of the measure is misleading, and the effect is unwise, unfair and subject to abuse.

To address the concerns raised by Mr. Moskowitz, the following amendments to Section 1399.503 were proposed. Delete the phrase, "but not limited to" and delete "revocations."

Legal counsel, Kurt Heppler, stated that these amendments should address clarity and necessity issues with the proposed language. Additionally, the phrase "but not limited to" is imprecise should be eliminated.

Because licensees who have failed to respond to the Accusation or agreed to a Stipulated Settlement, there is little discretion for the Committee to exercise in those situations. Mr. Heppler added that licensees rarely agree to a revocation, therefore, this term was eliminated.

Mr. Heppler also stated that section 1399.527.5 should also be amended to eliminate the phrase, “but is not limited to,” again because this phrase is imprecise.

A written comment was received from Stuart Seaborn of Disability Rights California. Mr. Seaborn stated that the proposed language ignores the Americans with Disabilities Act’s requirement that an employer’s decision to subject an employee to physical or mental examinations be based on objective evidence rather than the mere appearance of an issue that could affect the applicant’s ability to perform.

Mr. Heppler stated that the applicant indicates on the application (question 18) if they have a condition which in any way impairs or limits their ability to practice medicine with reasonable skill and safety. An evaluation may be triggered by the applicant affirmatively acknowledging they have a condition which would impair or limit their ability to practice medicine. Each application would be reviewed on a case-by-case basis. All applicants must demonstrate fitness for licensure. To address Mr. Seaborn’s concerns, Mr. Heppler recommended that the proposed language in Section 1399.507.5 be modified to state that an evaluation may be required whenever it reasonably appears that an applicant’s ability to perform the duties of a physician assistant may be impaired by mental or physical illness.

A brief discussion ensued.

A motion was made to accept the following amendments to the proposed language for a 15-day comment period. The Committee also moved to authorize the Executive Officer to make non-substantive changes as may be necessary to finalizing the regulation’s adoption.

- Section 1399.503: “including the ability to accept default decisions and the approve settlement agreements for the surrender or interim suspension of a license.”
- Section 1399.507.5: “In addition to any other requirement for licensure, whenever it reasonably appears that an applicant for a license may be unable to perform as a physician assistant safely because the applicant’s ability to perform may be impaired due to mental illness or physical illness affecting competency, the Committee may require the applicant to be examined by one or more physicians and surgeons or psychologists designated by the Committee.”
- Section 1399.527.5: In addition to the conduct described in Section 3527 of the Code, “unprofessional conduct” also includes the following:”

(m/Diaz, s/Stumpf, motion passes)

The hearing was closed at 1:30 p.m.

#### 17. Diversion Program Update

Glenn Mitchell, Regulation and Lead Licensing Analyst, gave a brief update on the Diversion Program. DCA is currently working with Maximus to implement provisions contained in SB 1441. Mr. Mitchell stated that currently there are 23 participants in the Diversion program.

18. Schedule of 2011 Meeting Dates and Locations

The Committee members agreed to the following dates and tentative locations as follows:

February 3<sup>rd</sup> UC Davis in Sacramento

May 19<sup>th</sup> Sacramento

August 25<sup>th</sup> Los Angeles/or location in the Central Valley

November 10<sup>th</sup> Sacramento

19. Agenda Items for Next Meeting

1. Report from the Physician Assistant Education and Training Sub-committee
2. CMA Diversion Committee
3. Update on Health Care Reform
4. Update on Breeze Program
5. Update on Enforcement Actions/disciplinary Process
6. Speaker from Maximus regarding the Diversion Program

20. **CLOSED SESSION:** Pursuant to Section 11126(c) (3) of the Government Code, the Committee will move into closed session to deliberate on disciplinary matters

21. **CLOSED SESSION:** Pursuant to Section 11126(a) (1) of the Government Code, the Committee will move into closed session to conduct the annual evaluation of the Executive Officer

**RETURN TO OPEN SESSION**

22. Adjournment

The meeting adjourned at 1:30 p.m.