



PHYSICIAN ASSISTANT BOARD

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MEETING MINUTES

May 19, 2014

**PHYSICIAN ASSISTANT BOARD
2005 Evergreen Street – Hearing Room #1150
Sacramento, CA 95815
9:00 A.M. – 5:00 P.M.**

1. **Call to Order by President**

President Sachs called the meeting to order at 9:35 a.m.

2. **Roll Call**

Staff called the roll. A quorum was present.

Board Members Present: Robert Sachs, PA-C
Charles Alexander, Ph.D.
Michael Bishop, M.D.
Jed Grant, PA-C
Catherine Hazelton
Rosalee Shorter, PA-C

Board Members Absent: Cristina Gomez-Vidal Diaz
Sonya Earley, PA-C
Xavier Martinez

Staff Present: Glenn L. Mitchell, Jr., Executive Officer
Kristy Shellans, Senior Staff Counsel,
Department of Consumer Affairs (DCA)
Dianne Tincher, Enforcement Analyst
Lynn Forsyth, Licensing Analyst
Julie Caldwell, Licensing Technician

3. **Approval of February 24, 2014 Meeting Minutes**

The February 24, 2014 meeting minutes were approved as written.
(m/Grant, s/Alexander, motion passes)

4. **Public Comment on Items not on the Agenda**

There was no public comment at this time.

5. **Reports**

a. President's Report

President Sachs indicated that he has learned that some California physician assistant licensees have been using the title of "physician associate" and not "physician assistant." President Sachs indicated that the use of "physician associate" seems to be more prevalent on the east coast. He added that he believes that the newer graduates of physician assistant training programs may believe that the title, "physician assistant" is demeaning and that "physician associate" is a preferable title as it implies that they are "associated" with not an "assistant" to physicians. Mr. Sachs stated that the use of "physician associate" may be confusing to consumers who are unfamiliar with this title.

Ms. Shellans indicated that using the title, "physician associate" is not appropriate and misleading to the public. Ms. Shellans also indicated that the use of this misleading title may be grounds for disciplinary action. She added that the facts of the case would determine the appropriate penalty, which could range from the issuance of a citation and fine to license revocation.

During public comment, Gaye Breyman, Executive Director, California Academy of the California Academy of Physician Assistants (CAPA), indicated that CAPA has a policy that the term for physician assistant is "physician assistant" as stated in the physician assistant laws and regulations.

b. Executive Officer's Report

Mr. Mitchell stated that the Board's licensing, verifications and enforcement functions converted to BreEZe on October 8, 2013. Mr. Mitchell stated that BreEZe replaces the old legacy ATS and CAS computer systems.

Mr. Mitchell added that Board staff continues to work with the BreEZe team on production stabilization issues. He also indicated that our main issues are with the enforcement and cashiering aspects and the generation of accurate reports in BreEZe.

Mr. Mitchell stated that our BreEZe licensing system is stable and continues to function as designed.

Mr. Mitchell informed the members that the physician assistant application is now available online. He added that he was informed that online renewals may be available after August of 2014.

Mr. Mitchell informed the Board about the CURES system (Controlled Substance Utilization Review and Evaluation System) which is a data base that contains records of controlled substance drugs dispensed in California.

For the Board, CURES data is useful in investigating complaints concerning dispensing or use of controlled substances by physician assistants.

Currently, the CURES system does not have the capability to meet current and future demands and needs to be updated. Additionally, budget cuts to CURES have impacted the system as well.

SB 809, signed by the Governor, will address funding issues and allow for enhancements to the system to better meet the needs of the users of this information.

Mr. Mitchell reported that effective with April 2014 renewals, a \$6 per year fee will be assessed. Because physician assistant licenses renew on a biennial basis, the CURES fee is \$12. Renewal notices for April and beyond renewals have been updated to reflect the CURES Fund fee.

Board staff continue to work on the finalizing the Feasibility Study Report (FSR) between the Department of Consumer Affairs, including the Physician Assistant Board, and the Department of Justice, who will be managing the CURES system. The completed FSR will then be sent to the California Department of Technology for approval to initiate the project.

Mr. Mitchell added that we also working with DCA to develop the CURES requirements document which will define what requirements are needed for the new system. This document will be the primary document utilized to solicit bids for the new CURES 2.0

c. Licensing Program Activity Report

Between February 1, 2014 and May 1, 2014, 167 physician assistant licenses were issued. As of May 1, 2014, 9,405 physician assistant licenses are renewed and current.

d. Diversion Program Activity Report

As of April 1, 2014, the Board's Diversion Program has 14 participants, which includes 4 self-referral participants and 10 board-referral participants.

A total of 124 participants have participated in the program since implementation in 1990.

e. Enforcement Program Activity Report

Between July 1, 2013 and March 31, 2014, 14 accusations were filed; 2 statement of issues were filed; 10 probationary licenses were issued, and there are currently 48 probationers.

6. **Department of Consumer Affairs**

Due to other commitments, Ms. Lally was unable to attend the meeting. To represent the Department, Michael Gomez, Deputy Director, Division of Investigation and Enforcement (DOI), provided a brief update on SB 304, which, among other things transferred the Medical Board of California's investigators to the Division effective July 1, 2014. The Physician Assistant Board currently utilizes the services of Medical Board of California investigators. Mr. Gomez gave a brief report about the status of the implementation of the transfer of investigators. Mr. Gomez indicated that town hall meetings were held on May 6, 2014 and that the transition was going well. He also indicated that after the transition there would not be any changes in the services as far as investigations are concerned and that there would not be any changes with the services DOI will provide. He also anticipates that agencies will receive better service. Mr. Gomez also stated that on June 30, 2014 there will be a swearing in ceremony for the MBC investigators as they transition to DOI.

7. **Regulations**

A. Title 16, California Code of Regulations, Section 1399.541 – Medical Services Performable

Mr. Sachs stated that the Medical Board of California held the regulatory hearing for this proposal at their February 7, 2014 Board meeting. Public comment received during the 45-day comment period was reviewed.

After a discussion, members of the Medical Board of California proposed to delete "or" from the original language. The Board adopted this change and there was a 15 day public comment period. At the Medical Board of California meeting on 2 May 2014, members reviewed public comments received. Following consideration of comments received from counsel from the Health Quality Enforcement Section, Medical Board of California staff recommended further clarification of the definition of "immediately available." Board members voted to approve the language and refer it back to the Physician Assistant Board for consideration.

Mr. Sachs added that if the modified language is approved by the Physician Assistant Board it would be referred back to the Medical Board of California and noticed for another 15-day public comment period. If no adverse comments are received it will be submitted to the Office of Administrative Law for their consideration.

Mr. Sachs indicated that staff recommended that the members review the proposed language, and if acceptable to the Board, make a motion to approve the modified language, and refer the matter back to the Medical Board of California for a 15-day public comment period.

Following a discussion a motion was made to approve the proposed language modifying Title 16, California Code of Regulations, Section 1399.541 and to refer the matter back to the Medical Board of California for a 15-day public comment period.

(m/Bishop, s/Grant, motion passes)

8. **Presentation on Ethical Decision Making for Board Members**

Ms. Shellans gave a brief description of the Bagley Keene Open Meetings Act. Ms. Shellans explained that the Act is a sunshine law to promote openness and transparency in the state government decision making process. Ms. Shellans explained that law requires boards, including the Physician Assistant Board, to conduct business in public with the exception of certain matters that may be legally conducted in closed sessions. The Act is very specific of what type of matters may be discussed in private. Ms. Shellans also stated that one role performed by legal counsel is to ensure that all Board meetings are in compliance with the Act.

Ms. Shellans explained to the Board that there are three basic provisions of the Act, including:

- To give adequate notice of meetings to be held
- Inform the public what items will be discussed at the meeting
- Conduct meetings in open session and provide the public with the opportunity to participate and comment on agenda items before the Board.

Ms. Shellans wanted to also bring to the Board's attention their role and responsibility to ensure compliance with the Act. She added that the Board should be aware of ethical issues that may be encountered and having in place successful strategies to resolve those ethical issues.

Some of the areas in which Board members should be aware of are: no "back room" deals, no serial meetings in which board members discuss matters with other members, and specific separation of functions within an agency, which includes separation of the prosecution team from Board members who will render decisions on those enforcement matters that come before them.

9. **Medical Board of California Activities**

a. **Prescribing Task Force Update**

Dr. Bishop stated that one of the Medical Board of California's top priorities is to address the prescription drug abuse epidemic. Since March was drug awareness month, the Medical Board produced a consumer awareness public service video that focuses on prescription drug abuse awareness.

Dr. Bishop also indicated that the Medical Board also developed a prescription drug strike force to address this issue. This specially trained group of investigators have recently issued numerous search warrants and made several arrests of physicians who were illegally or inappropriately prescribing.

Dr. Bishop indicated that on February 19, 2014 the Medical Board's Prescribing Task Force met regarding reviewing and updating the Board's Pain Management Guidelines. Dr. Bishop indicated that the Board's Pain Management Guidelines were developed in 1994 and most recently updated in 2007.

Dr. Bishop indicated that SB 304, the Board's Sunset Review bill passed on January 1, 2014. He added that a portion of this bill involves the transfer of the Medical Board's investigators and support staff to the Department of Consumer Affairs/Division of Investigation. Dr. Bishop indicated that this transition would be effective as of July 1, 2014.

10. **Budget Update**

Ms. Tincher indicated that as of March 31, 2014 Calstars projected that 40% of our current budget remains. Ms. Tincher stated that the fiscal year ends June 30 and that the Board has a 10 month fund reserve.

11. **The Legislative Committee**

a. Proposal to amend Business and Professions Code, Division 2, Chapter 7, Section 3509.5 – Administration.

This proposal would delete "chairperson" and "vice chairperson" and replace with "president" and "vice president"

Other health care related Department of Consumer Affairs boards that use the title President and Vice President include:

- Medical Board of California
- Board of Registered Nursing
- Osteopathic Medical Board of California
- Dental Board of California
- Physical Therapy Board of California
- Board of Optometry
- Board of Psychology
- Board of Pharmacy
- Vocational Nurse and Psychiatric Technician Board

Following a brief discussion, a motion was made to request that staff seek legislation to amend Business and Professions Code, Division 2, Chapter 7, Section 3509.5 to delete "chairperson" and "vice Chairperson" and replace with "president" and "vice president".

(m/Grant, s/Bishop, motion passes)

b. Legislation of Interest to the Physician Assistant Board

Catherine Hazelton indicated to the members that staff had provided the Legislative Committee with nine bills that may impact consumers, physician assistants or the Board. Ms. Hazelton also suggested that due to time restraints bills be prioritized and to discuss only the bills of interest to the Board.

The following bills were discussed by the Board members:

SB 1083 (Pavley) SB 1083 is sponsored by the California Academy of Physician Assistants. This bill authorizes a physician assistant to certify disability, after performance of a physical examination by the physician assistant under the supervision of a physician, and would correspondingly expand the definition of practitioner to include a physician assistant.

A motion was made to take a “support” position on SB 1083. Staff was directed to send a letter of support to the bill’s author.
(m/Grant, s/Bishop, motion passes)

AB 1841 (Mullin) This bill would allow medical assistants to furnish labeled and prepackaged prescription drugs, other than controlled substances, to a patient, if so ordered by a licensed physician, licensed doctor of podiatric medicine, a physician assistant, a nurse practitioner or a certified nurse midwife.

Dr. Bishop expressed concerns regarding the initial patient consultation not being with a licensed physician, physician assistant or a nurse practitioner. Dr. Bishop stated that he was concerned that misinformation could be provided by a medical assistant. Dr. Bishop added that the first discussion with the patient should be the physician, physician assistant or nurse practitioner and that there should be more clarity on what medical assistants are able to discuss with the patient.

Members suggested three amendments to AB 1841 which would address their concerns with this bill:

- Medical assistant may not provide consultation services to patients and that consultation may only be provided by a licensed physician, physician assistant, or nurse practitioner.
- A medical assistant may only provide to patients written instructions or information from the prescriber.
- Patients having concerns should be referred back to the prescriber by the medical assistant.

A motion was made to take as “support if amended” position on AB 1841 to state, “no consultation can take place between a medical assistant and patient regarding medication.” Staff was directed to discuss the Board’s concerns with AB 1841’s author prior to sending a support if amended letter.
(m/Grant, s/Bishop, motion passes)

AB 2058 (Wilk) This bill would modify the definition of “state body” within the Bagley-Keene Open Meeting Act, to exclude advisory bodies with less than three individuals, except for certain standing committees.

Ms. Shellans indicated that current law requires public notice when the Board delegates decision making authority to any multiple member bodies within the Board. Ms. Shellans added that under current law two person advisory committees created to review or research topics of interest to the Board and who ultimately recommend their findings to the Board are not required to notice such meetings. AB 2058 would require that two person advisory committees be noticed.

The Board, while supporting and encouraging transparency and public participation at their meetings, was concerned that AB 2058 would reduce significantly the Board’s productivity. As advisory bodies, they cannot act themselves, but can only advise the full Board a publicly noticed meetings in which the public may participate in the decision making process.

The Board was also concerned about cost implications of this bill. If committees of fewer than three members were required to meet in publicly noticed meetings, the increase in travel and communications costs, at taxpayer expense, could be significant.

A motion was made to take an “oppose” position on AB 2058. Staff was directed to send a letter of opposition to the bill’s author.
(m/Grant, s/Bishop, 4 yeas, 2 against, motion passes)

AB 2396 (Bonta). This legislative proposal would provide that a person may not be denied licensure solely based upon a conviction that has been dismissed following rehabilitation.

Ms. Shellans stated that AB 2396 would significantly change the way in which the Board would address criminal convictions when reviewing the applicant’s background and fitness for licensure.

Ms. Shellans explained that current law allows licensing agencies to review an applicant’s expunged convictions and make determinations for licensure. AB 2396 would not allow the Board to consider an expunged criminal conviction when determining an applicant’s fitness for licensure.

It is believed that the purpose of AB 2396 is to increase employment opportunities for those individuals who have had criminal convictions expunged.

The Board took no action on AB 2396.

SB 1091 (Galgiani) This legislative proposal would require state agencies to publish notice of “proposed rulemaking activities” in the California Regulatory Notice Register at least 15 days prior to undertaking the activity. Included

activities are informational hearings, workshops, scoping hearings, preliminary meetings, and public and stakeholder outreach meetings.

As a consumer protection agency, the Board supports transparency and encourages public participation in its rulemaking process. The Board believes that SB 1091 would reduce access, public participation, and government efficiencies.

Ms. Shellans stated that publishing notices in the Register as proposed by SB 1091 would add an extra five days to the ten days required by the Bagley-Keene Open Meetings Act. In practice, the Office of Administrative Law would need the agency's notice ten days prior to publication in order to get it published on time. This means that the Board would need to have the notice prepared and provided to OAL 25 days prior to the public meeting which would be burdensome and it may cut off more timely public participation as well.

The Board took an "oppose" position on SB 1091 and directed staff to send a letter of opposition to the bill's author.
(m/Grant, s/Bishop, 4 yeas, 2 against, motion passes)

SB 1159 (Lara) This bill would allow boards to issue professional licenses to those not legally residing in the United States. Current law requires the Board to collect social security numbers as a part of the application process. Currently, the Board is unable to issue licenses to applicants who do not report their social security number. This bill would only require collection of a social security number if "one has been issued to the individual."

It was indicated that the purpose of the bill is to allow the issuance of professional license to undocumented individuals.

At this time, there was no other legislation of interest to the board that was taken up or discussed.

12. **A lunch break was taken.**

13. **CLOSED SESSION:**

a. Pursuant to Section 11126(c)(3) of the Government Code, the Board moved into closed session to deliberate on disciplinary matters

RETURN TO OPEN SESSION

14. **Agenda Items for Next Meeting**

A. Legislation Report of bills of interest to the Board.

B. Board member reporting alleged violations of physician assistant laws and regulations to the Board.

15. **Adjournment**

With no further business, the meeting adjourned at 2:30 P.M.