

Agenda Item #20.D.

BUSINESS, CONSUMER SERVICES, AND HOUSING AGENCY • GOVERNOR EDMUND G. BROWN JR.



Board of Vocational Nursing and Psychiatric Technicians
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BOARD MEETING MINUTES

December 14, 2016

SACRAMENTO, CALIFORNIA

Department of Consumer Affairs
1625 North Market Boulevard, Room S102

BOARD MEMBERS

PRESENT:

Samantha James-Perez, P.T. Member, President
Andrew Moreno, Public Member, Vice-President
Bernice Bass de Martinez, Public Member
Tammy Endozo, L.V.N. Member
John Dierking, Public Member
John Vertido, L.V.N. Educator Member

BOARD MEMBERS

ABSENT:

Eric Mah, Public Member
Donna Norton, LVN Member
Todd D'Braunstein, PT Member

STAFF PRESENT:

Kameka Brown, Executive Officer
Cheryl Anderson, Supervising Nursing Education Consultant and
Assistant Executive Officer
Ann Hutchinson, Enforcement Representative, Complaints
Division
Jennifer Almanza, Acting Support Services Manager,
Administrative Analyst
Jessica Gomez, Nursing Education Consultant
Jennifer Johnson, Staff Services Manager I, Evaluations Manager
Rebecca Bon, Legal Counsel, Department of Consumer Affairs

1. CALL TO ORDER.

The meeting was called to order by Samantha James-Perez, Board President, at 11:05 a.m., December 14, 2016, at the Department of Consumer Affairs, 1625 North Market Boulevard, Hearing Room South 102 Sacramento, California.

2. PLEDGE OF ALLEGIANCE.

John Vertido led those assembled in the Pledge of Allegiance.

3. INTRODUCTION OF BOARD MEMBERS AND STAFF.

The Board Members introduced themselves. Kameka Brown, Executive Officer (EO), introduced board staff present, and Rebecca Bon, the Board's Legal Counsel, Department of Consumer Affairs (DCA).

4. CONSIDERATION AND POSSIBLE ACTION ON 2016-2017 SUNSET OVERSIGHT REVIEW REPORT. Dr. Kameka Brown, Executive Officer.

A. Discussion and Possible Action to Incorporate Executive Officer Letter into 2016-2017 Sunset Oversight Review Report.

Dr. Brown discussed that the EO letter is intentional to be not in the document but expressed that the Sunset should highlight the staff. The report should be a recognition of the staff instead of EO letter.

B. Consideration and Possible Action to Incorporate List of Accomplishments into 2016-2017 Sunset Oversight Review Report.

Dr. Brown stated that the major list of accomplishments are currently edited by the staff. She discussed about the mismanagement of resources which she stated that the board is more conscious of using resources, including fiscal resources such as the computers. Dr. Brown added that computers were recently donated to a local non-profit group which is a testament under the new leadership that the Board is being more conscious, thoughtful and giving to the community. This information will be included in the final report.

C. Consideration and Possible Action Regarding Response to Enforcement Monitor Report.

Dr. Brown commented to refer to the report for updates of the Enforcement monitor.

D. Consideration and Possible Action Regarding Deleting Proposed Legislation to Repeal Business and Professions Code §§ 2873 [VN] and 4511 (c)(3) [PT]. Qualification for Licensure Based on Equivalent Education and/or Work Experience.

Dr. Brown stated that instead of repealing Method 3, the Board is changing its regulations.

E. Review, Discussion, and Consideration of Additional Sunset Questions.

Dr. Brown highlighted that there were additional questions integrated into the Sunset report. She added that since the report is due the next day, the Board is asking for any changes both substantive and non-substantive that the recommendation to allow to move forward.

Board Discussion:

- Ms. James-Perez stated if Method III remains it should definitely change the regulations since there is a large amount of fraud which does not protect California consumers.
- Ms. Bass de Martinez asked Dr. Brown the sources of the additional questions. Dr. Brown stated that the first set of questions are from Senate consultant and the second set of

questions are from the Assembly. Dr. Brown added initially the report is being reviewed by the Senate Business and Profession but it appears that the report will be reviewed separately by the Senate and Assembly Business and Profession which will produce two Sunset reports.

- Mr. Vertido commented additional recommendation to include legislation to the process in regards to Method III process in verifying skills by including non-bias third party, accredited by the Board perform validation of skills. He added that applicants can easily ask friends who is an LVN, RN or DON to simply sign the employment verifications without executing the standard.
- Ms. Bass de Martinez expressed her concerns in regards to responding to two different entities. Each entity can be read the response in different ways and pass or make opposite recommendations. She asked Dr. Brown the potential ramifications might be if there are conflicting legislative actions passed.
- Dr. Brown validated Ms. Bass de Martinez's concern but not able to speak as of this time. She commented that there will be lobby days in January 2017 to meet and greet board members particularly the legislative committee with stake holds to talk about the upcoming Sunset, issues, to raise constituent issues, etc. and hoping to talk about the implications of the issue of two reports and should be able to provide more information at the February 2017 Board meeting. Dr. Brown acknowledged that two reports and multiple authors raises a flag for a potential issue but ensures that the board is proactive about it to provide concise responses and that reports will have positive outcome despite of.
- Ms. James-Perez asked for the date of the Sunset hearing, instead Dr. Brown commented that no exact date yet but will be around March 2017.
- Ms. Bass de Martinez commented that if there are contradictory reports, there will be serious work staffing issues in terms of staff's time, work, and effort and trying to be responsive to both while at the same time carrying on with their regular duties and responsibilities.
- Mr. Moreno asked Dr. Brown any indications why and how different reports has transpired.
- Dr. Brown stated that she became aware of the second report around October 2016 but prior to that she understood that the board will be submitting a report to the Assembly. It started to merge a new development late September-October that there were 2 reports that it has validated in November.
- Mr. Dierking asked Dr. Brown if there has there been an established methodology that the Board can review as far as the practices of a monitor.
- Dr. Brown commented that the Board was invited to a meeting on the March 10th and 11th, which there were an outline of a timeline of different phases. She stated that the monitors has a process on how to approach the project but was not able to see the preview of the methodology or the approach.
- Mr. Dierking commented that he was concerned since the board has education function approving different institutions, licensing and enforcement, and the report appears to be very heavy on enforcement. He added that when asked the monitor the same question from the last meeting, the top two priorities are related to enforcement. He also asked that if the board is required to complete all the monitor's recommendation.
- Dr. Brown clarified that during the meeting in November with the Senate consultant and the speakers that it is not one hundred percent accurate. She added that the Senate consultants stated that the board needs to comply but we need to support what we are doing and the monitor will still however report on the status of his recommendations.

- Ms. James-Perez commented that there are several recommendations that has been proactively addressing and doing, and those are the things that can be said that we have already done this and presents the proofs and will be followed up by one of our committees.
- Dr. Brown stated that the Bill outlines and does not require the board but needs to substantiate that we are doing under another mechanism. She added that the monitor will continue to report that the board is doing and his recommendations will put forward and may not be complying due to labor issues. The board will have to justify the reason. She stated that all three consultants responded that those are the things the board have to demonstrate.
- Ms. James-Perez commented that the board has not trouble in substantiating since everything is well documented from the progress has been made to the reasons and that was already accomplished.
- Dr. Brown assured that everything is in the new Sunset report and assured that the committee is not putting the board at risk but made sure that everyone understands that we are doing this under a different mechanism so we will never not have these things done but will be duplicative since we are doing separate reports but definitely can be able to substantiate all of these things.
- Mr. Dierking asked that the board's alternative is to demonstrate a path towards substantial compliance.
- Dr. Brown answered yes.

Public Comment: none

Motion: To adopt all recommendations and delegate to non-substantial changes to the Executive Officer.

Moved: John Vertido

Seconded: Bernice Bass de Martinez

Ms. Endozo, Mr. Vertido, Mr. Moreno, Ms. James-Perez, Ms. Bass de Martinez, Mr. Dierking and voted in favor of the motion. Ms. Norton, Mr. D'Braunstein and Mr. Mah were absent. **The motion passed.**

5. ENFORCEMENT COMMITTEE REPORT AND RECOMMENDATIONS.

Andrew Moreno, Board Vice-President; John Dierking, Board Member

A. Consideration and Possible Action on Recommendation Regarding Matters Related to Cost Recovery (Business & Professions Code § 125.3).

Board Discussion:

- Mr. Moreno suggested to table the item to the next February board meeting since some of the board members were not present who would want to be part of the discussion.
- Dr. Brown agreed and commented that it will allow the committee to set-up recommendations in order to have deeper analysis and financial information to which the board could have more robust discussion.
- Ms. James-Perez also agreed and stated that the item must be in the February board meeting agenda.

- Mr. Dierking stated that he was able to visit the Attorney General's office in San Diego and met with staffs and was able to share the concerns relating to fast track eligible cases. He added that one of the questions from staff was brought up was that if cases were not eligible for fast track, there was not a lot of following up from AG's office. He commented that fast track eligible cases are those non-adversarial cases but once applicants and licensees secure council, the case will be removed from the fast track since it will be an adversarial case. He discussed the reasons how cases were delayed in which cases are supposed to be paperless and there is not a lot of evidence to obtain in order to secure moving forward with the final disposition of the case; or sometimes it relates to a delay from the applicants or the licensees. He continued to discuss that the board adopted the CPEI standards and in October 15 the board filled the new position in intake analyst and a dedicated fast track coordinator who is Amy Wyckoff. He commented that the board may require more training as far as the eligibility for fast track review and to fully use the delegated subpoena power and there was a coordinator in San Francisco, Oakland office.
- Ms. James-Perez stated her appreciation to Mr. Dierking in his diligence in reaching out and meeting with the AG staffs which keeps the board under the radar.
- Mr. Dierking commented in relation to Cost Recovery, suggested if it is possible to meet with DCA Financial prior to the February meeting to conduct a study as far as the Recovery which the board does not have any matrix.
- Ms. James-Perez and Mr. Moreno agreed with Mr. Dierking.
- Ms. Vertido expressed his concern on time management in discussing the item in the February board meeting in Los Angeles that more data would mean more discussions.
- Dr. Brown commented that the board has the flexibility to extend a day and has the flexibility in revising the agenda but will ensure that the board will have the time necessary for this and will make sure the minutes from the enforcement committee regarding financial provides enough information to make sure the concern is targeted.

Public Comment: none

Motion: To table the discussion of Cost Recovery to the February 2017 meeting.

Moved: Andrew Moreno

Seconded: Tammy Endozo

Ms. Endozo, Mr. Vertido, Mr. Moreno, Ms. James-Perez, Ms. Bass de Martinez, Mr. Dierking and voted in favor of the motion. Ms. Norton, Mr. D'Braunstein and Mr. Mah were absent. **The motion passed.**

6. PRACTICE COMMITTEE REPORT AND RECOMMENDATIONS.

Samantha James-Perez, P.T., Board president; Donna Norton, L.V.N., Member

A. Consideration and Possible Action on Recommendations Regarding Matters Related to Respiratory Care.

1. Practice Committee Recommendations Regarding Procedures for Care of Clients with Respiratory Deficits.

Mr. Vertido summarized the respiratory scope of practice for LVNs.

2. Practice Committee Recommendations Regarding Impact of business and Professions Code Division 2, Chapter 8.3, Article 6 (Respiratory Therapy Offenses and Enforcement) on Scopes of Practice of Licensed Vocational Nurses and Psychiatric Technicians.

Ms. James-Perez discussed the meeting with Ms. Norton regarding Method 3 and a possible threat to the VN scope of practice.

Public Comment:

- Coby Pizzatti from CAPT supported the motion and also offered to provide a support letter.
- Stephanie Nunez, Executive Officer Respiratory Care Board commented that she is hopeful to work together but thinks the board needs to consider legal in order to determine the scope of practice and to expand it if the board is considering.
- Ms. James-Perez clarified that the board is not seeking to expand its scope of practice but seeking to retain the scope of practice.
- Mike Madison, Respiratory Care Practitioner and serving President for California Society for Respiratory Care expressed his appreciation for the comments and broad years of experience but think that the respiratory duties are over generalized. He commented that when it comes to life support, practitioners should be highly trained on a regular basis dealing with these type of patients.
- Dr. Williams expressed his concern regarding abilities of LVNs in respiratory assessments that the board needs to consider the thousands of patients in long term care, if the LVNs cannot perform the assessment. He also agreed with the Respiratory Board that ventilators should be handled by a specialist but thinks should consider handling the respiratory assessment and what the board should allow to erode and we should not really allow to erode because it is important.
- Ray Hernandez, Dean of Science Technology from Skyline Community College expressed his appreciation of the information and discussion at the meeting. He commented that to look at the basic to advance level and where does that scope of practice for LVNs and where the next practitioner does began.
- Lolita Gibson, Dean of Nursing of Carrington College commented that the practice act remain the same. She added that they are not trying to replace the respiratory therapy but respects them and thinks that they respect the practice act for LVNs at the utmost. Ms. Gibson also commented that respiratory assessment is a basic nursing function.
- Dr. ?? , Vice President Nursing for Unitek College commented that as health care provider they are focused on the client and the care. He continued that as a nurse, they have to be able to assess but if the system only allow them to do only cardiac and renal but they are not supposed to do respiratory while this is affecting the whole thing, it will be hard for them to perform care. He expressed his main concern which if the care for the patient.
- Dr. Carol Mountain representing Sacramento City College and also part of the practice board commented that decreasing the scope of practice of LVNs would not be able to

provide care for patients in ventilator. She added that it would deny patients the basic right and opportunity.

- ??? Dean of Nursing in Brightwood College, Sacramento
- Monique Stephanie, clinical educator, practice has been generalized need to clarify what is to consider the fine line for respiratory care and LVN.
- Elizabeth Estrada representing the Southern California Directors of VN Programs commented that they support keeping the respiratory assessment and practice in VN.
- Marc Goldstein, Respiratory Care Board and a practitioner He commented that in regards to patient's safety, VNs are essential but the actual training of the machine is extremely limited. Expressed his appreciation to the board for being the eyes and ears to further define to move on in taking care of the patients.

Board Discussion:

- Ms. James-Perez expressed her opinion that the board cannot allow VN scope of practice to be eroded either through misinformation or spreading of false information. She added that the board needs to take a stand that this is within scope of practice and any information contrary needs to stop.
- Mr. Dierking asked if scope of practice issues have to go through legislative process.
- Ms. Bon confirmed.
- Mr. Vertido stated that the board has the responsibility to define LVNs and PTs may or may not able to do under the scope of practice.
- Mr. Dierking asked if the cease and desist would impede or impair the scope of practice of VNs. He added if the institutions who are intended recipients of the letter abide by it would impede and impair the healthcare delivery.
- Ms. James-Perez confirmed that there will be limitations and the scope of practice will be misrepresented.
- Dr. Brown suggested the practice committee will serve as representatives in meeting with RCB and DCA offers legal representation to include in the work group.
- Mr. Vertido stated that this board is the only governmental agency in the state of California that defines the scope of practice for VNs and PTs by the board's own charter in the nurse practice act.
- Mr. Vertido commented that many of the presentation by the members of the respiratory community are accurate that they do things that are not within the scope of practice of VNs. He said that RT and VN need to work and respect each other.
- Ms. James-Perez commented that the board is simply seek to maintain the scope of practice.
- Ms. Bon commended that the working group addressed more concretely. She added that if the group has the opportunity to clear the facts and understand the real parameters and define the lines more clearly, it could have a better results before any letters were issued. She suggested to perhaps amend the motion or considering adding another motion to incorporate the aspects and reduce any conflicts.
- Ms. James-Perez suggested that the working group includes staff members from education department, preferably Ms. Anderson, and VN board members, Mr. Vertido and Ms. Norton.
- Mr. Moreno commented that as a public member has learned more regarding respiratory therapist and the scope of practice for LVN but does not want to overlook that the board has in fact received a cease and desist letter and to review and discuss it.
- Dr. Brown clarified that the board did not receive the letter but the institution who also asked for the board's assistance.

- Ms. James-Perez assumed that the working group would include both Eos of the Board. Asked if Dr. Brown would like to participate.
- Dr. Brown agreed.
- Ms. James-Perez proposed Mr. Vertido, Ms. Anderson, Dr. Brown and Ms. Norton to take part in the working group. She also asked if the board would like to amend the motion.

Motion: To appoint representative to the work group that will work with RCB regarding scope of practice who are Mr. Vertido, Ms. Norton, Ms. Anderson and Dr. Brown before writing a letter from this board.

Moved: Tammy Endozo

Seconded: John Dierking

Ms. Endozo, Mr. Vertido, Mr. Moreno, Ms. James-Perez, Ms. Bass de Martinez, Mr. Dierking and voted in favor of the motion. Ms. Norton, Mr. D’Braunstein and Mr. Mah were absent. **The motion passed.**

7. LEGISLATIVE COMMITTEE REPORT AND RECOMMENDATIONS.

Todd D’Braunstein, P.T., Board Member; John Dierking, Board Member

A. Discussion and Possible Action on Sunset Question Regarding Merging BVNPT with Other Occupational Licensing Boards or Continued Existence as a Separate Board.

Mr. Dierking provided an update subsequently on the report that on Dec 8th board received correspondence from California Nurses Association in regards to against potential merge. He recommended to further meet with stake holders and constituents and provide the board with periodic updates.

Public Comment:

- Mr. Pizzatti read an article about BRN backlogs based on an audit and commented that there is no benefit that could be derived from merging two boards. He strongly opposed the idea of the merge and will speak with the legislature.

Board Discussion:

- Mr. Vertido and Ms. Bass de Martinez expressed their appreciation on their work on the Leg Committee.
- Dr. Brown commented and referred to the Sunset report on page 59 that the board continues to improve in regards to legacy backlogs. She also commented to the same article Mr. Pizzatti referred to which talked about fingerprints backlogs and referred to the report on page 41 audit finding that the board has 95% for legacy fingerprints and does not have a history of a backlog in that area.
- Ms. James-Perez expressed how proud she is with the board and the staff with all of the improvements in enforcement delays. She commented that the staff’s hard work and the board’s leadership should be recognized.
- Ms. Endozo commented that as an LVN practitioner she would feel lost in shuffle if the board will be merged with another board.

Motion: To accept the report of the Legislation Committee.

Moved: John Vertido

Seconded: Bernice Bass de Martinez

Ms. Endozo, Mr. Vertido, Mr. Moreno, Ms. James-Perez, Ms. Bass de Martinez, Mr. Dierking and voted in favor of the motion. Ms. Norton, Mr. D’Braunstein and Mr. Mah were absent. **The motion passed.**

8. PUBLIC COMMENT ON ITEMS NOT ON THE AGENDA.

The Board may not discuss or take action on any matter that is not included on this agenda except to decide whether to place the matter on the agenda of a future meeting. [Government Code Section 11125 and 11125.7 (a)].

Public Comment:

- Ms. Estrada commented that there was a tremendous resource in all the directors and would like to encourage the board to ask the directors to participate in the committees. She also suggested to add an item in the future agenda a discussion on the curriculum and reach out to experts in curriculum development. She expressed her concern the low pass rate for California and believes that curriculum is a core piece on how colleges bring out knowledge to the students.
- Ms. James-Perez stated that there are Director’s Forums with Nursing Education Consultants who could discuss with the directors.
- Mr. Vertido commented that directors are supposed to have background in curriculum development therefore curriculum presented should be polished as possible for approval.
- Ms. Estrada continued to comment on the provisional accreditation proposed to have more consistency in approving. She commented that she was aware that there are some schools have extended provisional approval and they have continued low pass rates, whereas some schools may have improved but were closed down.

9. SUGGESTIONS FOR FUTURE AGENDA ITEMS.

Ms. James-Perez reminded the board that in February meeting will allot enough time to discuss Cost Recovery.

10. ADJOURNMENT.

The meeting was adjourned at 1:17 pm

Prepared by: _____
Dr. Kameka Brown
Executive Officer

Date: _____

Approved by: _____
Samantha James-Perez
President

Date: _____

DRAFT