

# MEETING MINUTES

January 28, 2019  
PHYSICIAN ASSISTANT BOARD  
2005 Evergreen Street – Hearing Room #1150  
Sacramento, CA 95815  
8:30 A.M. – 5:00 P.M.

## 1. Call to Order by President

President Grant called the meeting to order at 8:30 a.m.

## 2. Roll Call

Staff called the roll. A quorum was present.

Board Members Present: Charles Alexander, PhD.  
Juan Armenta, Esq.  
Jennifer Carlquist, PA-C  
Sonya Earley, PA-C  
Javier Esquivel-Acosta, PA-C  
Jed Grant, PA-C  
Xavier Martinez  
Robert Sachs, PA  
Mary Valencia

Staff Present: Maureen L. Forsyth, Executive Officer  
Kristy Schieldge, Attorney III  
Julie Caldwell, Administrative Analyst  
Rozana Firdaus, Enforcement Analyst  
Anita Winslow, Lead Licensing Analyst  
Sarah Fletcher, Licensing Technician

## 3. Approval of November 5, 2018, Meeting Minutes

M/ Robert Sachs S/ Sonya Earley to:

Approve the November 5, 2018 Meeting Minutes.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved with the conditions to correct the spelling of Mr. Grant's name in line item 278 and change Ms./Mrs. to Mr. in line items 260 & 288.

No public comment.

#### **4. Public Comment on items not on the Agenda**

(Note: The Board may not discuss or take action on any matter raised during this public comment section that is not included on this agenda, except to decide whether to place the matter on the agenda for a future meeting. [Government Code Sections 11125, 11125.7(a).])

#### **5. Regulation Hearing, Discussion and Possible Action to Amend Section 1399.617**

##### **a. Regulatory Hearing on the Amendment of Audit and Sanctions for Noncompliance, Section 1399.617 of Division 13.8 of Title 16 of the California Code of Regulations**

Physician Assistant Board (Board) President Jed Grant introduced himself and stated the following:

Today's date is January 28, 2019 and this hearing is beginning at approximately 9:00 a.m. This is the time and place set for the Physician Assistant Board to conduct a public hearing on the proposed regulatory changes to sections 1399.617 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice on November 30, 2018.

The roll was called and a quorum was established.

At this time, the hearing will be opened to take oral testimony and or documentary evidence by any person interested in these regulations for the record which is now being made by tape recorder. All oral testimony and documentary evidence will be considered by the Physician Assistant Board, pursuant to the requirements of the Administrative Procedures Act, before the Board formally adopts the proposed amendment to these regulations or recommends changes which may evolve as a result of this hearing.

If any interested person desires to provide oral testimony, it will be appreciated if he or she will stand or come forward and give his or her name and address and if he or she represents an organization, the name of such organization, so that we will have a record of all those who appear. It is the desire of the Board that the record of the hearing may be clear and intelligible, and that the hearing itself may be orderly, thus providing all parties with fair and ample opportunity to be heard.

Mr. Grant asked if there were any questions concerning the nature of the proceedings or the procedure to be followed. No questions were asked.

Mr. Grant asked if there was anyone who wished to testify. No testimony given. The hearing was closed.

**b. Discussion and Possible Action to Amend Title 16, California Code of Regulations Section 1399.617 – Audit and Sanctions for Noncompliance**

Ms. Winslow stated that this regulatory proposal was amended to help strengthen continuing medical education (CME) compliance by requiring licensees to respond within a specified time frame, provide accurate and complete information in response to CME audits conducted by the Board, and provide the Board with additional enforcement mechanisms for CME audits.

Previous to amending this regulation, the Board would issue a citation and fine and an order of abatement for licensees failing to respond the CME audit letter. If the licensee complied with the order of abatement, the Board would cancel the citation and fine because the regulation language did not support the citation and fine(s) ranging from \$250-\$750.

In response to Mr. Martinez’s question on how the Board determined the fine structure, Ms. Winslow responded that the fine amounts are determined by the Board’s executive officer and the licensee’s level on noncompliance.

In response to Mr. Grant’s questions regarding when this is considered unprofessional practice and what happens if the fines are left unpaid, Ms. Winslow responded that when a licensee fails to comply with a citation and fine, the Board places a manual hold on the licensee’s account and they will not be able to renew their license until they comply with the fine.

As of this date no written comments have been received. This proposed regulatory amendment will not have a significant adverse economic impact on businesses.

M/           Juan Armenta           S/           Xavier Martinez           to:

Direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law (OAL), authorize the Executive Officer to make any non-substantive changes to the proposed regulation, and adopt the proposed regulation as originally noticed.

<b>Member</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

**6. Reports**

a. President’s Report

#### Attendance at Governor Brown's Farewell Reception:

Mr. Grant reported that he was accompanied by Mr. Sachs and Mr. Martinez in attending a farewell reception for Governor Brown. Mr. Grant appreciated the invitation and welcomed opportunity to attend the event.

#### Physician Assistant Board Website Updates Regarding Recent Changes in Law:

Mr. Grant reported that there is a new legal requirement for providers to use numbered prescription pads when prescribing controlled substances. Unfortunately, a lack of a transition period created difficulty for some individuals in getting controlled substance prescriptions filled. Information for both licensees and the public is available on the Board's website regarding a solution for this issue.

Effective October 2018, providers prescribing opiate pain medication or controlled substance medication are required to consult the Controlled Substance Utilization Review and Evaluation System (CURES). The Board's website provides an informational graphic to assist licensees in understanding the reason this is required and both the requirements and implementation of the law encouraging safe prescribing of opiates to the public.

#### b. Executive Officer's Report

##### Staffing and Potential Office Space:

Ms. Forsyth reported that with the assistance of the Department of Consumer Affairs' Budget Office, the Board has been given approval to change the time base of the Licensing Technician position from part-time to fulltime beginning July 1, 2019 and to hire both a fulltime Office Technician and a fulltime Probation Monitor. The Board has secured new office space within the building located at 2005 Evergreen Street, and hopes to move by the first part of fiscal year 2019/20.

#### c. Licensing Program Activity Report

Ms. Winslow reported licensing activity from October 15, 2018 to January 8, 2019, to be:

- Initial application received – 285
- Licenses issued - 281
- Total licenses renewed and current - 12, 691

January 1, 2018 – December 31, 2018

- Initial applications received - 1, 341
- Licenses issued – 1,162
- Licenses renewed – 5, 581

Mr. Grant questioned the accuracy of the initial applications received based on the possible 650 students graduating from California programs, Ms. Winslow responded that the split would be 50/50 if you include individuals who are already licensed and are moving back into California but 80% of applications received from new graduates, are graduates from a California program.

Ms. Winslow stated that the Board averages 38 days to complete the initial application review, beginning on the day the Board receives both the application/payment and ends once the initial application review is completed; averages 56 days to issue a license, beginning on the day the Board receives both the application/payment and ends once the license is issued.

In response to Ms. Earley's questions of if the application process is computerized, if paper applications are slowed down due to the processing of payments and whether the Board experiences lulls in the submission of applications, Ms. Winslow responded that applications are reviewed in the order they are received so applying online can benefit an applicant, paper applications are not slowed down due to processing the payment and that the Board has not experienced any lulls in the submission of applications.

Public Comment: Gaye Breyman, Executive Director of the California Academy of PAs (CAPA), questioned the maximum number of days, allowed by Board's regulations, to process an initial application. Ms. Schieldge responded that the Permit Reform Act was used to require agencies to set minimum/maximum timeframes to process applications but that act was repealed many years ago. The Department of Consumer Affairs (DCA) recommends having goals set for minimum processing times and those goals are set by each board. Ms. Forsyth stated that the Board tries to complete an initial application review within 30 days but due to an increase in workload and the current part-time base of the desk the initial reviews have been taking a bit longer. She hopes to meet the 30-day window once the desk goes fulltime.

d. Diversion Program Activity Report

Ms. Forsyth reported total licensees participating in the drug and alcohol diversion program as of December 31, 2018 to be:

- Total number of participants currently in the program - 10
- Total number of participants since inception – 151

In response to Mr. Sachs question on when the new Maximus contract will begin, Ms. Forsyth responded that the Request for Quote is in development, the contract expires at the end of 2019 and she expects to receive multiple bids.

e. Enforcement Program Activity Report

Ms. Firdaus reported enforcement activity from October 1, 2018 to December 31, 2018, to be:

- Complaints – Intake
  - Complaints received – 98
  - Assigned to desk analyst (\*\*may include cases received in previous quarters) – 102
  - Pending at intake – 6
- Complaints and Investigations
  - Complaints referred for investigation – 18
  - Complaints and investigations closed\*\* – 75
  - Complaints pending at desk analyst\*\* – 131
  - Investigations pending at field\*\* – 93
  - Average age of pending investigations\*\* – 362 days
  - Investigation over 8 months old - 41
- Office of Attorney General Cases
  - Cases initiated – 5
  - Cases pending\*\* - 33
  - Average age of pending cases\*\* - 465 days
- Formal Actions Filed/Withdrawn/Dismissed
  - Accusations filed – 9
- Administrative Outcomes/Final Order
  - Licenses Denied - 0
  - Placed on probation – 2
  - Public Repeval – 1
  - Surrender – 2
  - Probationary license issued to applicant – 1
- Current Probationers
  - Active – 61
  - Tolling – 5
- Citations and Fines (July 1, 2018 to September 30, 2018)
  - Pending – 3
  - Fines due - \$1,500
- Citations and Fines (October 1, 2018 to December 30, 2018)
  - Resolved/closed – 1
  - Fines received - \$1000
  - Fines due from previous & current quarter - \$500

Ms. Firdaus reported from July 1, 2018 to December 31, 2018, to be:

- Complaints received – 211

The majority of these complaints fall within the category of negligence and/or incompetence, but they may not all have merit.

In response to Mr. Grant's questioned if the Attorney General (AG) may have provided feedback helping to explain the reason(s) why the age of pending cases is so high and if there is a reason why the age of pending investigations is nearing a year, Ms. Firdaus replied that the numbers on this specific report are from BreEZe; the AG does not provide feedback to the Board. A variety of reasons impact the age of pending cases which includes the complexity of the cases but the Board does monitor the statute of limitations and contacts the field office if the statute is in jeopardy. Mr. Armenta stated that as a litigator the numbers don't surprise him because of the time involved during the negotiation process with private counsel and

there also may be an incentive for the licensee to draw it out in order to maintain their license. Ms. Schieldge stated that there is not a statute of limitations.

In response to Mr. Sach's question about if the Board tracks tolling of the licensees on probation, Ms. Firdaus responded that the language in older stipulations stated that the license would be canceled if the licensee tolled more than two years, new stipulation language states that the Board can file a petition to revoke probation at the two year mark.

## **7. Department of Consumer Affairs (DCA)– Director's Update**

Patrick Le, Assistant Deputy Director for Board and Bureau Services of the Department of Consumer Affairs (Department), thanked the Board for the opportunity to address the Board and reported the following accomplishments for the Department during 2018:

- Convened nine licensing and enforcement workgroups which allowed an opportunity for staff of all DCA boards to share best practices in the areas of licensing and enforcement.
- Held three Substance Abuse Coordination Committee Meetings which helped redefine some standards regarding drug testing for substance abusing licensees.
- Held four Director's Quarterly Meetings providing an opportunity for executive officers and bureau chiefs to meet with Director Grafilo and members of the executive team.
- Held two Board Member Leadership Teleconference Calls between board presidents/vice-presidents and Director Grafilo and the executive team.

The Department hopes that these activities were helpful in fostering additional collaboration between the boards and the Department and furthering the mission of protecting California consumers.

A more comprehensive list of the Department's activities is available in the Annual Report posted at [www.dca.ca.gov](http://www.dca.ca.gov).

On January 7, 2019, Governor Gavin Newsom was sworn in as the 40<sup>th</sup> Governor of California. DCA is honored to be part of this new team and is looking forward to working with Governor Newsom and his team to further his vision. There is no action needed by current gubernatorial appointees at this time.

On January 10, 2019, Governor Gavin Newsom released the budget, outlining the fiscal priorities for the State based on the driving idea of a "California for All". The budget proposes to pay on debts and pension obligations and continues to build up robust budget reserves while making significant investments in housing, child care, health care, preschool, hire education and making significant changes in the areas of prescription drugs. On the day of the budget release, the Department held a teleconference call with board leadership to discuss the Governor's 2019-20 proposed budget and review proposals within the budget specific to the Department. The Fiscal Operations and Budget Team will follow up with each program to discuss individual budgets.

A reminder that 2019 is a mandatory compliance year regarding sexual harassment training; all employees and board members are required to complete the training, even if they completed the training in 2018.

**8. Consider Proposed Legislation for Initial Application Fee Increase**

Ms. Forsyth stated that she was accompanied by Mr. Grant and Ms. Firdaus when attending a meeting with Mr. Cuevas-Romero and Mr. Tacher of the Legislative Unit where they discussed the Legislative requirements to increase the application processing fee of the initial application for licensure. Ms. Forsyth stated that the Board has not increased this fee since the inception of the Board. A desk audit, performed by Board staff, supports increasing this fee from \$25 to \$60 dollars and the next step will be to gain the support a legislative author. Ms. Schieldge stated that a prior motion authorized staff to seek a legislative amendment allowing for a fee range of \$57-\$250 and then to set the fee amount by regulation. Ms. Schieldge suggested that the Board make a motion to increase the fee range from \$57-\$250 to \$60-\$250 based on the information Ms. Forsyth provided. Ms. Forsyth suggested to have staff conduct a new desk audit.

M/ Xavier Martinez S/ Jennifer Carlquist to:

Delegate authority to the Executive Officer to conduct a new desk audit and set the floor of the fee increase based on the results of the desk audit.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

**9. Consider Identifying Measures to Create an Independent Physician Assistant Board**

Mr. Grant stated the Board’s 2019-22 Strategic Plan includes exploring the feasibility of becoming a fully independent board. Mr. Grant stated that the PAs are grateful for the relationships with physicians in the practice setting and for the relationship with MBC as the boards have a shared services agreement. The Board would like to maintain these relationships, however there are some significant cultural differences between physicians and PAs and between the boards that make it important for the Board to become fully independent from MBC. Mr. Grant clarified that this is not seeking independent practice and this decision is consistent with the growth of the profession and Optimal Team Practice (OTP). PAs are capable of self-regulation just as other healthcare professions.



PA practice has matured to the point where it is appropriate for the Board to be fully independent and ensure that the best evidence based protection of the public occurs through informed regulation of PA practice by this Board.

Mr. Grant anticipates the separation to begin with a gradual transition of the shared services MBC currently provides to the Board as this won't require any Legislative change because this is an agreement between the boards. Mr. Grant stated he was accompanied by Ms. Forsyth and Ms. Firdaus when meeting with DCA to explore this idea and the process involved whereas discovering that it is quite an involved process. As a result of an additional conversation with Ms. Valencia it was determined that this would not be a viable option for this year as the Legislation session deadline has closed. The Board will be conducting research, planning, meeting with shareholders, determining what PA laws will need to be changed in order to be ready for next Legislation session. Mr. Grant opened the floor for discussion amongst the members and suggested the possibility of forming a subcommittee to further pursue this subject.

In response to Mr. Martinez's questions of when the next Legislative session begins and the process involved to adjust the Board's budget to include the additional costs due to the transition of shared services, Mr. Grant responded that the Legislative session will close roughly the same time next year in January. Ms. Forsyth responded that additional staff will be need to handle complaints and the disciplinary coordination unit but some of the shared services, such as IT support and cashiering, she would like to leave with MBC.

In response to Mr. Sachs question of what shared services could be transferred to the Board at this time, Mr. Grant responded that all the shared services could be transferred as they are not part of either legislation or regulation; becoming an independent board is more about determining scope of practice and supervision.

Ms. Valencia asked Ms. Forsyth to provide a breakdown of shared services that would be transferred and services that would remain with MBC and allow the Board an opportunity to analyze the information. Ms. Forsyth responded that she would work on providing the information requested.

In response to Mr. Alexander's question of whether separating from MBC would change the Board's composition in terms of being required to have a Board member who is a physician. Mr. Grant stated that would be one of the items discussed, as of now, the Board has an ex officio member of MBC but the position has not been filled and will retire at Sunset.

M/ Xavier Martinez S/ Charles Alexander to:

To direct council to explore what changes to law would need to occur in order to become a fully independent Board.

<b>Member</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				

Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

Public comment: Gaye Breyman, Executive Director of CAPA, commented that CAPA is not aware of any other board that is structured like this, maybe our research hasn't turned up any boards or committees that have this type of relationship, but that would be something to find out as well.

Ms. Schieldge responded that the California Dental Board and the Dental Hygiene Board of California have the same structure, where the scope of practice for the hygienists is set by the Dental Board of California even though they are separate. A lot of the healing arts boards were originally committees within the Medical Board before moving into their own independent bodies, so there is precedent and she will be looking at all scenarios involving boards who have separated from the Medical Board. Ms. Schieldge stated that there are various provisions in the Physician Assistant Practice Act that mention Medical Board of California involvement such as the Board is within the jurisdiction of the Medical Board of California, so that would need to be changed. The composition of the Board would have to be looked at and what the Board would want to do from a policy perspective. She will highlight all of these items and then the Board will have to decide what they want to propose in the way of legislation. Ms. Breyman stated that she is excited that there is precedent.

M/ Xavier Martinez S/ Robert Sachs to:

To create a subcommittee to work on this project, report back to the Board and to have the authority to work closely with counsel for clarification when it is needed. The appointment of the committee members will be demined at a later date.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

Public comment: Gaye Breyman, Executive Director of CAPA, stated that she believes, in the past, there has been someone outside of the Board that has been allowed to serve on this kind of a committee and asked if this would be possible. Ms. Schieldge stated that it is up to the Board's President to decide who serves on this

subcommittee, it doesn't have to be a Board member but the committee can only have two people to avoid the requirement to hold a noticed meeting.

## **10. Physician Assistant Board Budget Sub-Committee Update**

Mr. Martinez's stated that he had no additional information outside of what had already been discussed in the update provided by DCA's budget staff under Agenda Item 19.

Mr. Martinez stated that prior to the January Board meeting he had an opportunity to meet with Ms. Reyes and board staff and found this meeting extremely helpful in order to have a better understanding of the budget process. Mr. Martinez thanked Ms. Reyes for her hard work.

## **11. Report on Medical Board of California Activities**

Kimberly Kirchmeyer, Executive Officer of the Medical Board of California (MBC), thanked the Board for the opportunity to provide them with an update regarding MBC.

- MBC is providing a lot of CURES outreach regarding changes to CURES and the mandatory use requirement by providing a FAQ on their website, which has been very helpful, and by attending a lot of physician organizations where she provides an overview of what is required and what exemptions are allowed. She does ask PAs who are in attendance to contact their Board with questions related to the PA practice because she is speaking on behalf of MBC.
- Also offered on their website a FAQ regarding AB 2760, the requirement to offer naloxone. MBC worked with the California State Board of Pharmacy and Department of Justice to draft a letter addressing the change in the prescription pads and the unique serialized number, also posted on their website. She stated that there is legislation in process to allow for a transition period.
- MBC's upcoming board meeting will include a discussion on the amount of impairment questions currently on their application and the possibility of paring down the time frame to address current issues so that they are in line with the Federation of State Medical Board's policy.
- May 9, 2019, MBC will hold a Patient Advocate Interested Parties meeting looking to hearing from individuals about their views of the board and board's processes in order to make the board more effective and in meeting its' mission of consumer protection.
- MBC's Enforcement Unit has been working hard to transition working cases without vertical enforcement. There will still be a few cases where joint investigation will be used but for the most part, cases will just be worked by the Health Quality Investigation Unit at DCA.
- MBC's Licensing Unit is readying itself for the change in post graduate training requirements by working on new applications and procedures and hosting webinars from February through July of 2019. There is also a podcast on the board's website addressing changes with postgraduate training.

- PAB's regulation package regarding supervision of physician assistants is pending at DCA and is hopeful that a hearing will be scheduled soon.

## **12. Update Regarding Optimal Team Practice (OTP) of Physician Assistants**

Mr. Grant stated that the Board's November 2018 meeting minutes provided a good summarization of OTP. The Board is moving towards becoming independent. He wants to again clarify that OTP is not independent practice but it is an update of the PA Practice Act to reflect how medicine is practiced now rather than the 1970s when the Practice Act became effective. Some components of OTP are that supervision is not tied to one specific physician, supervision requirements are determined at the practice level, there is an independent PA board and direct reimbursement to PAs. PAs are always associated with a physician and supervised by a physician in order to strengthen healthcare teams, reduce administrative burdens and allow decisions about scope to be made at the practice level rather than at the legislative level. The intent is to increase access to care, make it easier for PAs to volunteer, flexibility to practice to the full extent of their license and ultimately to lower healthcare costs. This will require some legislation change in California in order to change the PA Practice Act. The Board has agreed to form a subcommittee to work on becoming independent from MBC and CAPA is working on other parts of the legislation; time frame for this in the next 1-3 years.

Public Comment: Gaye Breyman, Executive Director of CAPA, stated that the time frame is not 1-3 years, on February 22, 2019, there will be a bill introduced which will be passed in the first year it's in session and CAPA is looking for the Board's support. OTP is not independent practice, we're looking to practice in teams with physicians. She understands that nurse practitioners are introducing independent practice again this year, carried by Senator Wood. It is not in the PA's DNA to be independent but they want to continue the mantra that they have been talking about with California Medical Association and MBC for 30 years. PAs are trained in the medical model and are part of a team and want to stay part of a team, but want all the burdens that make PAs uncompetitive removed. Ms. Breyman stated that the bill will be born on February 22, 2019, and the language will be available to the Board by the end for February. She stated they have several people who are interested in authoring the bill but CAPA has not chosen the author as of yet.

## **13. Consider Attorney General's Annual Report on Accusations prosecuted for Department of Consumer Affairs Client Agencies**

Ms. Schieldge stated that the Attorney General's (AG) office is required to submit this report annually to DCA, the Governor and appropriate policy committees of the legislature and it has a list of reporting requirements for each constituent entity, the Board being one. The report contains cases that the AG's office has prosecuted for the Board. The first table of the report deals with the number of accusation matters that were referred in the last year to the AG's office, the number that were rejected for anything requiring further investigation requested by the AG's office, matters for which further investigation was received, accusations filed, accusations withdrawn and matters adjudicated by the AG. Matters adjudicated by the AG are the cases that have been completely taken from start to finish and finalized based on the calendar year. The second table deals with processing times for accusations and the mean and median processing times for those decisions that were referred.

Ms. Schieldge pointed out, as a point of discussion, that the AG's office notes that there is not a statute of limitations within which to file accusations for the Board but that the Board generally follows the Medical Board of California's limitations period which is generally three years from the discovery of the act or omission charged in the accusation. Ms. Schieldge commented that if you have an important consumer protection case the board should decide whether to prosecute or not. If there is no requirement that a case be dropped after a certain period of time in law, the board should consider how well you think you'd be able to prosecute it based on available witnesses and evidence, and whether, from a resource perspective, it makes sense. Ms. Schieldge stated that the executive officer should not be bound by the Medical Board's statute of limitations as it does not apply, but rather base the decision on the normal prosecutorial considerations.

Mr. Grant asked if there will be a change to any of these times as a result of eliminating vertical enforcement. Ms. Firdaus commented that vertical enforcement was only used when there was a supervising physician involved and it will still be used if there is a supervising physician involved. Ms. Firdaus stated the calculation of time begins once the complaint is received, to how long the investigation takes and then when it is transmitted to the AG. She doesn't know how the AG is calculating the time frames. Ms. Schieldge stated that is it calculated from when it is transmitted from the field to the AG's office.

Mr. Grant asked whether not having a statute of limitations helps the Board. Mr. Firdaus replied that she believes it will help especially in matters involving the death of a patient. The Board has received multiple California Department of Public Health cases and once we say that it has passed the statute of limitations, we can't pursue the case. From a consumer protection standpoint, it is great, but as far as prosecuting a case there needs to be an in-house policy so the field office understands there is a timeline to follow even though there is not a statute of limitations. Ms. Schieldge stated that it is one thing to give direction to the field office but it is another for the AG's office to tell the Board that it is not jurisdictional because three years have passed. She expressed concern that the cases the AG is rejecting is because they represent the case is beyond a statute of limitations, which does not apply.

## **CLOSED SESSION**

- A. Pursuant to Section 11126(c)(3) of the Government Code, the Board moved into closed session to deliberate and take action on disciplinary matters.
- B. Pursuant to Section 11126(e) of the Government Code, The Board moved into closed session to receive advice from legal counsel in the following matter: *Mari Jo Hanson v. State of California Department of Consumer Affairs, Physician Assistant Board, et al., Superior Court of California, County of Los Angeles, Case No. BC652433.*

## **RETURN TO OPEN SESSION**

### **14. Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations Section 1399.525 Substantial Relationship Criteria**

Ms. Winslow stated that the first item needing to be established for AB 2138 was what the Board considered substantial relationship criteria. Ms. Winslow commended Ms. Schieldge for her hard work and asked that she explain to the Board what was determined.

Ms. Schieldge stated that one of the amendments effective July 1, 2020, is that Section 480 of Business and Professions Code (BPC), which is one of the Board's basis for denial of application for physician assistant license, will be substantially amended. Currently, under BPC section 480, if the Board wants to consider denial of a license denial may occur if he or she has a substantially related criminal conviction, or has committed any act that would be grounds for discipline against a licensee or has committed an act of dishonesty with the intent to substantially benefit themselves or another. Two of these grounds for denial will be struck under this legislation: 1) acts of dishonesty and 2) committing any act, which if done by licentiate, would be grounds for denial. These grounds will be replaced with professional misconduct, in this state or another state, committed with another licensing body, not specific to the Board.

This is a change because under current law the Board cannot deny somebody a license if they have been found to have committed unprofessional conduct in this state. The additional grounds for denial for professional misconduct committed means that if another California board takes action against a licensee, that discipline can be used to deny an applicant a license by the Board. In addition, BPC section 141, which is for professional misconduct, has been added as a basis for revocation or discipline for a licensee in another state.

The next amendment to Section 481 of the BPC is the revision of the language allowing state agencies to set the criteria for what is considered substantially related to your profession. Effective July 1, 2020, the statute will say that "Criteria for determining whether a crime is substantially related to the qualifications, functions, or duties of the business or profession a board regulates shall include all of the following: (1) The nature and gravity of the offense. (2) The number of years elapsed since the date of the offense. (3) The nature and duties of the profession in which the applicant seeks licensure or in which the licensee is licensed."

This means that the Board's criteria shall include those three items and the Board can't decide not to use those criteria because the Legislature is saying that these criteria have to be used. Ms. Schieldge stated that by adding the new subdivision (b) to the regulation the Board has recognized those criteria. This new criteria applies only to crimes, there are other grounds for denying a license besides a crime. Subdivision (c) of the proposed regulation covers the Board's other bases, criteria which the Board currently has and uses. Ms. Schieldge stated that because of the addition of the new authority allowing the Board to deny a license based on professional misconduct in this state or another state that the Board might want to acknowledge that other state or federal laws governing the practice of physician assistants should be considered related to your profession as well.

The proposed changes are to align the regulation for substantial relationship to the ones that are required in BPC 481 and to recognize the new basis for denial in BPC 480.

In response to Mr. Grant's question if these proposed changes are for initial licensees, Ms. Schieldge responded that it is for the purposes of denial, suspension or revocation of a license. Everything applies equally to applicants and to licensees, they are tracking each other except for crimes as only subdivision (b) applies to crimes and whereas subdivision (c) applies to crimes and other bases for denial and discipline.

M/ Robert Sachs S/ Mary Valencia to:

Approve the proposed regulatory text for Section 1399.525, direct staff to submit the text to the Director of the Department of Consumer Affairs and Business Consumer Services and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package and set the matter for hearing.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

Ms. Schieldge stated that this is the first step in getting the text out there for circulation and review by the control agencies. If approved for filing, then it will go out to the public and the public will have 45 days to comment and then we would have a hearing.

**15. Discussion and Possible Actin to Initiate a Rulemaking to Amend Title 16, California Code of Regulations Section 1399.526 Rehabilitation Criteria for Denials and Reinstatements**

Ms. Schieldge stated this one was hard to understand and interpret the text in the bill and to fix the regulation so that it would be in line with new changes in law.

Currently under BPC section 482 the Board has the authority to set the rehabilitation criteria for applicants and licensees. Regulation 1399.526 is for applicants and 1399.527 is for licensees. The challenge is that under current law the Board is given general authority to write the rehabilitation criteria in the way the Board sees fit for the licensing population. Beginning July 1, 2020, BPC 482 will be amended significantly by requiring that applicants cannot be denied a license if they've made a showing of rehabilitation. Ms. Schieldge stated that BPC 482 will read, "each board shall consider whether an applicant or licensee has made a showing of rehabilitation if either of the following are met: 1) the applicant or licensee has completed the criminal sentence at issue without a violation of parole or violation, or, 2) the board,

applying its criteria for rehabilitation, finds that the applicant is rehabilitated.” The question is, what is a showing?

Ms. Schiedge stated that when this bill was first introduced it said “the board shall find that an applicant is rehabilitated if they’ve completed the criminal sentence without a violation or if the board finds after applying its rehabilitation criteria that the person is rehabilitated”. When the bill went before the Senate Business Professions Committee, the Committee was concerned that by writing the word “shall” they had removed the board’s discretion so they changed the introductory sentence to “the board shall consider whether”. The challenge is to understand what the Legislature may have intended in order to amend the Board’s current regulation.

Ms. Schiedge stated that her office worked with the Attorney General’s Office to draft two options to change the Board’s regulations. Option No. 1 gives the Board the most discretion to evaluate an applicant’s rehabilitation. Subdivision (a) states, when considering the denial of a license on the ground that the applicant was convicted of a crime, the Board shall consider whether the applicant made a showing of rehabilitation and is presently eligible for a license, if the applicant completed the criminal sentence at issue without a violation of parole or probation. In making the determination, the Board shall consider the following criteria:

- 1) The nature and gravity of the crime(s).
- 2) The length(s) of the applicable parole or probation periods(s).
- 3) The extent to which the applicable parole or probation period was shortened or lengthened, and the reason(s) the period was modified.
- 4) The terms or conditions of parole or probation and the extent to which they bear on the applicant’s rehabilitation.
- 5) The extent to which the terms or conditions of parole or probation were modified, and the reason(s) for modification.

Ms. Schiedge stated that there is a list of criteria to analyze for this option as opposed to Option No. 2. The question is whether the Board thinks that just by completing parole or criminal probation it is enough to show rehabilitation and if it is enough then the Board can grant an unrestricted license.

Ms. Schiedge stated subdivision (b) of Option No. 1 states, that if subdivision (a) is inapplicable, and the Board determines that the applicant did not make the showing of rehabilitation based on the criteria in subdivision (a), the Board shall apply the existing rehabilitation criteria to the applicant.

Of the two options provided to the Board, Option No. 2 is easier to implement and really reflects a policy that if you have completed a criminal sentence without a violation of probation or parole, the Board will direct staff to presume the person is rehabilitated. The Board doesn’t apply or evaluate any criteria, the Board simply presumes that if there has been no subsequent offense the person has been rehabilitated. If the person is being denied for a reason other than a crime, then the Board would apply the current criteria.

Mr. Grant stated that satisfying criteria for criminal parole and probation makes the person whole in terms of the general public, but we tend to hold our licensees to a higher standard because they are entitled to the public trust. Option No. 2 states you have satisfied what it takes to be a normal member of the public, but Option No. 1



makes more sense because the Board can take a closer look and evaluate whether or not the PA license should be issued in order to protect the public.

Ms. Winslow asked if the Board has the right to ask the applicant for proof of rehabilitation and what happens if the applicant refuses to provide the Board with proof of rehabilitation. Ms. Schieldge stated Option No. 1 would allow the Board to request the information and if they choose to deny the Board’s request the applicant risks denial. The difference is that the Board uses the criteria in subdivision (a) to examine the parole and rehabilitation to determine what the applicant did to show the Board that they are safe to practice and if they don’t meet the criteria the Board is still required to complete the analysis using the requirements of subdivision (b) to give them a second opportunity to provide further evidence of rehabilitation. If the Board chooses Option No. 1 it will be a two-tiered process for crimes, not including professional misconduct, violation of the Practice Act or practicing unlicensed. Option No. 2 will be a one-tier process if there is no violation of probation.

In response to Mr. Grant’s question whether this proposal would apply only to reinstatements and denials, Ms. Schieldge stated yes.

M/ Jennifer Carlquist S/ Robert Sachs to:

Approve the proposed regulatory text of Option No. 1 for Section 1399.526, direct staff to submit the text to the Director of the Department of Consumer Affairs and Business Consumer Services and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package and set the matter for hearing.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

**16. Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations Section 1399.527 Rehabilitation Criteria for Suspensions and Revocations**

Ms. Winslow asked that the Board note a couple of corrections to the verbiage in the memo to the board explaining the regulatory proposal. The second sentence of paragraph one should read “an applicant or licensee when considering suspensions revocations” and she meant to replace “applicant” with “licensee” as this proposal has to do with a suspension or revocation of a licensee, not an applicant.

Ms. Schiedge stated that the major difference for this regulation is that instead of analyzing whether the individual made a showing of rehabilitation and is presently eligible for a license, the question is if the person is presently fit for a license. The same model is used as with the other proposal, implementing a two-tiered process. Option No. 1 would allow the Board to use additional criteria to determine whether someone is rehabilitated after completing parole or probation without a violation, and if they don't meet the criteria in subdivision (a) to move to the criteria in subdivision (b) when evaluating criteria for crimes. Option No. 2 is a more simplified process, if they have completed parole or probation with no violations then the Board would presume they would be rehabilitated. The same model is applied but the Board is examining fitness for licensure because they already have a license versus an applicant's eligibility for licensure.

M/ Jennifer Carlquist S/ Robert Sachs to:

Approve the proposed regulatory text of Option No. 1 for Section 1399.527, direct staff to submit the text to the Director of the Department of Consumer Affairs and Business Consumer Services and Housing Agency for review and if no adverse comments are received, authorize the Executive Officer to take all steps necessary to initiate the rulemaking process, make any non-substantive changes to the package and set the matter for hearing.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

### **17. Regulations – Update, Discussion, and Possible Action**

#### Proposed Amendments to Title 16, California Code of Regulations, Section 1399.515 –Retired Status for Physician Assistant Licenses

Ms. Winslow reported the regulation will be effective April 1, 2019. A Section 100, a non-substantive change, was filed to include the new Governor's name on the application and change the layout of the application. Breeze will be able to implement the new status.

#### Proposed Amendments to Title 16, California Code of Regulations, Section 1399.617 – Audit and Sanctions for Noncompliance

Ms. Winslow reported this should be effective by April 1, 2019.

### **18. Education/Workforce Development Advisory Committee**

Mr. Grant provided the following update regarding accredited PA programs:

- Current United States programs – 238
  - 62 of these programs are developing
- California programs – 16
  - 9 of the CA programs are provisional
  - 1 of the CA programs is on probation
  - 5 new programs currently under development
  - 637 current student capacity for California programs

Mr. Grant stated there is a lot of growth occurring nationwide and particularly in California and the need to expand and increase staffing is timely.

In response to Mr. Martinez's question regarding the program that is on probation, Mr. Grant responded that he doesn't know the reason the program is on probation but the program is still operating and accepting classes which means that the program is probably working to resolve their status.

### **19. Budget Update**

Marie Reyes, DCA Budget Analyst, and Mark Ito, DCA Budget Office Manager, reviewed the Board's budget summary, fund condition and projected expenditures for 2018-19. Ms. Reyes stated that the budget summary is an outline for FY 2018-19 and proposed for FY 2019-20. On January 10, 2019, Governor's budget for the Board was 1.795 million, change book and baseline adjustment were made resulting in 1.821 million budget for FY 2018-19; Governor's proposed budget for FY 2019-20 is 2.133 million.

Ms. Reyes stated that the fund condition indicates that the Board is structurally balanced, total revenue is higher than expenditures. FY 2019-20 revenue includes end of the year repayment of the General Fund loan plus interest.

Ms. Reyes reviewed the FY 2018-19 Expenditure Projection explaining that the projection also includes actual expenses for the last three fiscal years so that the Board can see that each projections for FY 2018-19 will be in line with the Board's anticipated expenditures. She stated that the section titled Personnel Services is based on the actual roster, Operating Expense and Equipment is based on an average of the last three fiscal years, Enforcement includes the \$90,000 baseline budget adjustment and Net Appropriation reflects a surplus of \$68,775.

In response to Mr. Grant's request for clarification of the change book reduction adjustment, Mr. Ito responded that the change book items are changes that happen after the Governor's proposed budget is announced but before it is signed. The change book adjustment shown on the Board's budget summary for FY 2018-19 is a result of administration changes within the Real Estate Board resulting in a savings that was redistributed between the boards.

In response to Mr. Martinez's question of if the FY 2019-20 proposed budget can be changed by the Legislature and is the staff augmentation figure set, Mr. Ito responded that the Legislature can change both the proposed budget and the staff augmentations included in the January 10<sup>th</sup>. Mr. Ito stated that the starting point for

building the FY 2019-20 budget is 1.794 million and pro rata costs did increase due to the staff augmentation.

In response to Mr. Armenta's question of if ongoing litigations costs are computed into the Board's budget, Ms. Schieldge responded yes.

Mr. Grant thanked Ms. Reyes for her hard work.

## **20. Discussion Regarding Enacted Legislation**

- AB 3760 – Naloxone Hydrochloride Prescribing for High Risk Patients

Mr. Grant stated the naloxone is the reversal agent for opiates which means that when an individual overdoses on an opiate their breathing slows or stops and naloxone reverses that. This bill requires that a prescription for naloxone be offered when a patient is prescribed 90 or more morphine milligram equivalents a day, co-prescribed benzodiazepine, patients shows an increased risk of overdose including a history of overdose or history of substance abuse disorder or is at risk for returning to a high dose of opioid medications which means the patient may no longer be tolerant. For example, a patient is at risk for an overdose if they used to be on a high dose of medication and has been weaned off or stopped taking the medication and then is prescribed a higher dose medication.

Mr. Grant stated that he needs clarification as the bill currently reads "the patient is prescribed" and he is unclear if this has to be done for every patient meeting these criteria or just for the person being prescribed the medication. Mr. Grant stated that he thinks the legal understanding is that "if the patient is prescribed" but it needs to be clarified because that is functionally a huge difference when providers are seeing patients. Mr. Grant expects to have to do this if prescribing these medications but if he is required to look at these criteria for every patient who may be on these medications, he will have to stop and take a careful look at all of the medicines they're taking to see if naloxone needs to be prescribed and he may not have access to all of the patient's records.

Ms. Schieldge stated that BPC section 742 states that they shall be referred to the appropriate licensing board solely for the imposition of administrative sanctions deemed appropriate by that board but this is not part of the PA Practice Act or Medical Practice Act. She stated that she is unsure how this would be charged, maybe unprofessional conduct, it would be difficult to determine the statutory basis to impose what needs to be done when it is not within the PA Practice Act. The implementation perspective would need to be addressed. Ms. Schieldge suggested to place AB 149 on a future agenda to track the developments.

- AB 2983 – Health Care Facilities: Voluntary Psychiatric Care

Mr. Grant stated that if a patients presents to a hospital voluntarily seeking mental health services, particularly in the emergency department, patients should not be placed on a hold under section 5150 of the Welfare and Institutions Code. The patient still has consent if they're seeking psychiatric help unless they meet 5150 criteria. If the patient doesn't meet 5150 criteria and desires to leave, they should not be held against their will.

- SB 1152 – Homeless patient Discharge Requirement

Mr. Grant stated that this bill requires hospitals to have a safe place of discharge for homeless patients which applies to emergency department patients, operating room or surgical patients who are under observation in the hospital or in patients who are released. Most of the onus for this is on the hospital but the provider should be aware that there is a legislative requirement that homeless patients have a safe place to go when discharged. This became effective January 1, 2019 and implementation is required by July 1, 2019.

- Controlled Substance Utilization Review and Evaluation System (CURES) 2.0 Mandatory Use Requirement

Registration information and CURES information is available on the Board’s website. Providers are personally required to check the CURES database, unless exempt.

**21. Agenda Items for the Next Meeting**

- 1) SB 1109
- 2) AB 149
- 3) Application fee increase
- 4) Report on identifying measures to create an independent PA board
- 5) Workforce Development Education Advisory Committee Report
- 6) Budget report
- 7) Optimal Team Practice
- 8) Personnel update
- 9) Relocation of office
- 10) Update by the Legislative Committee

M/ Jennifer Carlquist S/ Sonya Earley to:

To adjourn meeting.

<b>Member</b>	<b>Yes</b>	<b>No</b>	<b>Abstain</b>	<b>Absent</b>	<b>Recusal</b>
Charles Alexander	X				
Juan Armenta	X				
Jennifer Carlquist	X				
Sonya Earley	X				
Javier Esquivel-Acosta	X				
Jed Grant	X				
Xavier Martinez	X				
Robert Sachs	X				
Mary Valencia	X				

Motion approved.

With no further business the meeting was adjourned at 2:05 p.m.

Minutes do not reflect the order in which agenda items were presented at the Board meeting.