

MEETING MINUTES

April 29, 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
Jed Grant, PA-C
Xavier Martinez
Robert Sachs, PA

Board Members Absent: Javier Esquivel-Acosta, PA-C
Mary Valencia

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

3. Approval of January 28, 2019, Meeting Minutes

M/ Robert Sachs S/ Sonya Earley to:

Approve the January 28, 2019 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	

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. Reports

a. President's Report

Presentation Given to University of the Pacific's Physician Assistant Class of 2021 on Physician Assistant Laws in California

Mr. Grant reported since the Board's last meeting he was given an opportunity to deliver a presentation regarding the California PA Laws and Regulations governing the PA practice to the 2021 graduating class of the University of the Pacific. The Board is currently working on a standardized presentation.

Board Outreach to Address Spam Calls Received by Licensees – Calls Purporting to be Affiliated with Government Agencies

Mr. Grant reported that nefarious individuals or organizations have been calling PA licensees reporting to be affiliated with government agencies and demanding information and payment from licensees. Mr. Grant assured PAs that the Board would never call and demand payment in such fashion and encouraged licensees to contact the Board if they are a recipient of such a call. He stated that the Medical Board of California (MBC) has reported this to law enforcement.

Questions Regarding Implementation and Applicability of Retired Status Regulations

Mr. Grant reported the Board now offers a retired status and licensees who are not engaged in activities for which a license is required may apply for retired status. Licensees who do not intend to maintain their California license but are engaged in activities for which a license would be required, will not be able to apply for retired status. Retired means you are not practicing medicine or seeing patients, including not practicing in another state.

Ms. Schieldge stated "retired" means no longer practicing your profession. Licensees who do not qualify for a retired status because they are still practicing medicine in another state, and do not wish to maintain an active license in California can request that their license be placed in an inactive status, surrender their license, or allow the license to expire.

In response to Mr. Grant's request to clarify the difference between a delinquent license status and an inactive license status, Ms. Schieldge

responded even though the Department of Consumer Affairs (DCA) uses the status of delinquent, the license is actually expired. When a licensee doesn't fulfill the requirements to renew their license, the license expires and the individual's status is unlicensed. However, DCA displays the license on the web site as "delinquent" for up to five years. A license that is in a "delinquent" status may be reinstated for up to five years following expiration upon payment of all renewal fees and completion of required continuing education requirements. The license will cancel after five years and the licensee will have to reapply for a new license if they want to practice in California again. California licensees with an inactive license status are required to fulfill the renewal requirements with the exception of CMEs.

Upcoming Reappointments

Mr. Grant reported in addition to himself, Mr. Martinez, Mr. Sachs and Ms. Valencia are all in the final year of their current appointments to the Board. Reappointment packets have been submitted and they are awaiting news of reappointment.

b. Executive Officer's Report

Staffing and Potential Office Space

Ms. Forsyth reported that the Board's physical office will be relocating suites within the Evergreen office building sometime in the latter part of 2019.

Ms. Forsyth announced the promotion of Sarah Fletcher to Staff Services Analyst and she will begin working full-time July 1, 2019. Ms. Forsyth reported the office personnel positions will increase during the upcoming fiscal year and desk duties will change allowing staff to focus on developing a newsletter.

c. Licensing Program Activity Report

Ms. Fletcher reported licensing activity as of April 15, 2019:

- Pending initial applications – 186
- License with a retired status - 4
- Total licenses renewed and current – 12,905

January 9, 2019 – April 15, 2019

- Initial applications received - 275
- Licenses issued – 311
- Licenses renewed – 1,666

Licensing Performance Measures

Applications Approved Between January 9, 2019 – April 15, 2019

- Complete Applications – 37 days

- Incomplete Applications – 69 days

Complete Applications: All requirements were met at the time the initial application review was completed.

Incomplete Applications: All requirements were not met at the time the initial application review was completed.

In response to Mr. Grant's request to define the terms web user and desk age used in the Pending Application Workload report, Ms. Fletcher responded web user refers to an application submitted online without payment. The Board doesn't consider it received without payment; therefore, the application has yet to be assigned to a staff member. The term desk age is the number of days the application has been assigned to a staff member.

Ms. Fletcher stated the Board currently use a 30 day target to complete the initial review of an initial application.

In response to Ms. Earley's question of whether the review of the initial application will meet the twenty days depicted on the Licensing Performance Measures report, Ms. Forsyth responded the twenty day target was established when the volume of applications was significantly lower. The twenty day target time will be reassessed after the transition of the licensing desk going from part-time to full-time.

d. Diversion Program Activity Report

Ms. Forsyth reported total licensees participating in the drug and alcohol diversion program as of March 31, 2019 to be:

- Total number of participants currently in the program - 11
- Total number of participants since inception – 154
- Total number of cases closed – 143

In response to Mr. Sachs' request for a status update of the new diversion contract, Ms. Forsyth responded a Request for Bid is currently under development and the current contract with MAXIMUS expires at the end of 2019.

e. Enforcement Program Activity Report

Ms. Firdaus reported enforcement activity from January 1, 2019 to March 31, 2019, to be:

- Complaints – Intake
 - Complaints received – 121
 - Assigned to desk analyst (**may include cases received in previous quarters) – 127
 - Pending at intake – 11
- Complaints and Investigations
 - Complaints referred for investigation – 20

- Complaints and investigations closed** – 98
- Complaints pending at desk analyst** – 131
- Investigations pending at field** – 9
- Average age of pending investigations** – 364 days
- Investigation over 8 months old - 47
- Suspensions
 - Interim suspension orders - 3
- Office of Attorney General Cases
 - Cases initiated – 9
 - Cases pending** - 44
 - Average age of pending cases** - 465 days
- Formal Actions Filed/Withdrawn/Dismissed
 - Accusations filed – 7
- Administrative Outcomes/Final Order
 - Petition for Reinstatement Denied - 1
 - Placed on probation – 1
 - Surrender – 2
 - Probationary license issued to applicants – 2
- Current Probationers
 - Active – 60
 - Tolling – 6
- Citations and Fines (October 1, 2018 to December 31, 2018)
 - Pending – 0
 - Fines due - 0
- Citations and Fines (January 1, 2019 to March 31, 2019)
 - Fines issued - 1
 - Fines pending – 1
 - Fines due from previous & current quarter - \$500

In response to Mr. Grant's request for the process involved once a complaint is filed, Ms. Firdaus responded:

- Complaints are filed either electronically, by mail, and may be filed anonymously.
- The complaint is first initiated in the BreEZe system and assigned to an analyst.
- The analyst writes a synopsis and recommends to either close the complaint or send it out for further investigation.
- The complaint recommendation is then routed to Ms. Forsyth for approval; however, Ms. Forsyth can disagree with the recommendation.
- If additional investigation is required the complaint is sent to a medical expert to determine if there has been a departure from standard of care, or sent directly to the field.
- If departure from standard of care is determined, then the complaint is sent to Division of Investigation for further investigation.
- Upon completion of the investigation, the complaint is either closed or referred to the Attorney General to file an accusation.
- If the departure from standard of care is egregious, the Board can impose a suspension order on a licensee to ensure consumer protection.

In response to Mr. Grant's question if the 131 complaints pending at desk analyst under the section titled Complaints and Investigations of the Enforcement Activity Report includes the 127 that are assigned to a desk analyst, Ms. Firdaus stated yes, the 131 includes both the 127 assigned and complaints from the previous quarter.

In response to Dr. Alexander's request to clarify the term non-jurisdictional indicated on the Complaints Received by Type and Source report, Ms. Firdaus responded these are complaints that are received by the Board but not under the Board's authority and are referred to other agencies.

In response to Mr. Sachs' comment that the majority of the complaint process is handled by MBC, Ms. Firdaus responded yes.

6. Department of Consumer Affairs (DCA)– Director's Update

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

- DCA's Deputy Director, Dean Grafilo, left his post on April 19, 2019. Mr. Le expressed sincere gratitude for his mentorship and friendship and DCA wishes him luck as he starts a new chapter in his career. DCA's executive team looks forward to working with the Governor's office to ensure a smooth transition as they prepare for new leadership.
- DCA retained KH Consulting, to conduct an executive officer's salary study. The study aims to provide an in depth analysis of programmatic and operational complexities of DCA boards and bureaus as well as salary comparison surveys from other states. The initial estimated completion date was March 19, 2019, but unfortunately there has been a delay due to some challenges in receiving information from other states. In the interest of incorporating as much data as possible of positions similar in scope located in other states, the time line has been extended. DCA is aiming to provide a draft to the boards and bureaus in May.
- DCA reconvened the Substance Abuse Coordination Committee, due to SB 796. The Committee examines drug testing standards for substance abusing licensees. Sometime this week DCA will be releasing a survey to stakeholders and executive officers to determine other uniform standards that may need to be examined and changed.
- DCA hosted the first Technology Advisor Council (TAC) meeting on March 7, 2019. TAC is led by Deputy Director of Information Services, Jason Piccione. TAC will review and discuss trends in technology within government and provide guidance and general direction regarding innovative efforts that include the potential utilization of using artificial intelligence to provide customer service. TAC will make recommendations about policies consistent with the goals and objectives of DCA.

- January 2019, DCA's Office of Information Services announced the launch of the DCA Open Data Portal. The portal is accessible to the public and offers comprehensive data on both licensing and enforcement statistics across all DCA entities.

7. Legislative proposal for Initial Application Fee Increase

Ms. Forsyth stated Board staff is currently conducting a desk audit and once it is complete, staff will compile figures to see if the results of the desk audit supports increasing the initial application fee.

8. Discussion Regarding the Board's Authority to Approve Controlled Substance Education Courses, Title 16, California Code of Regulations, Section 1399.610

Mr. Grant stated California Code of Regulations (CCR) section 1399.610 reads that the Board is responsible for making sure controlled substance education courses meet certain standards before approving the course. Mr. Grant expressed concern because currently there isn't a mechanism in place so the Board can accomplish this regulation requirement. He would like this remedied to ensure that the controlled substance education courses meet the requirements before the courses are approved.

Ms. Schieldge stated the current regulation reads "a controlled substance education course shall be deemed approved by the Board if it meets all of the following criteria...". Currently, the Board doesn't have an application and approval process but does have minimum standards and it is presumed that the course meets those standards if they have met regulatory criteria. CCR section 1399.612 gives the Board the authority to request and review copies of the providers' course records to determine if the provider is meeting the standards. The current regulatory structure provides that if the Board has knowledge of an issue with a provider or receives a complaint about a provider, the Board can request records to determine whether the provider is meeting minimum standards. If the request is denied, the Board has the authority to set a deposition, subpoena the records, or require the provider to appear before the Board in order to secure answers to questions the Board may have.

Ms. Schieldge stated most of her clients either approve the accrediting bodies responsible for approving the providers or they don't approve education courses due to resource issues. She recommended that the Board consider tightening up the regulation to address the process involved when the Board experiences a problem.

Ms. Caldwell indicated the Board's website currently lists course providers whose course syllabus were both reviewed by the executive officer and compared against the regulatory requirements for a controlled substance education course. At a minimum, the syllabus provides evidence that the provider is offering a controlled substance course that meets regulatory requirements. Ms. Caldwell asked if the Board has the authority to attend and audit a controlled substance course in order to determine if the course information presented does in fact meet the regulatory requirements. Ms. Schieldge stated the Board could send a letter to the provider requesting that their course records be made available to the Board to review and if denied, the Board could subpoena the records because all boards and bureaus have general investigative authority.

Mr. Grant stated, in essence, course providers listed on the Board’s website are considered de facto approved because if listed, they must be approved. Also, CCR section 1399.612 requires a provider of any controlled substance educational course intended to meet the requirements of CCR section 1399.610, to use qualified instructors. Mr. Grant does not wish to complicate the process, but the course should not be deemed approved unless the Board knows the course meets the regulatory criteria.

Ms. Schieldge advised the Board to consider whether the Board is going to take a proactive role to review and approve the courses. As it sits, the courses are deemed approved and the Board doesn’t have to take on the responsibility of actively approving by way of reviewing. Ms. Schieldge advised it becomes a legal issue if the Board deems a course not approved, which could be construed as a denial and would trigger a due process issue. The regulation is currently silent about what happens if a course provider does not meet minimum standards. She would like an opportunity to think about how to resolve this, if the Board agrees there is a problem, and provide text to fill in the regulatory gaps.

Ms. Earley questioned whether or not the Board should remove this language from its web site since the Board is not currently approving the courses.

Mr. Martinez suggested to revisit this once the Board has an approval mechanism in place.

Mr. Grant clarified the two separate issues, 1) the Board should ensure courses listed on the Board’s website meet the regulatory requirements and there needs to be a mechanism in place to accomplish this task, and 2) if the Board wants an approval/denial process, the regulation needs to be changed. In the meantime, the Board should at a minimum verify the course curriculum is compliant with regulatory requirements and give feedback to the provider if the Board determines that the course does not meet regulatory requirements. Ms. Schieldge stated that under the current structure this would be more of an advisory notice as opposed to a formal denial. Mr. Grant indicated that this may be the second part of the regulations that needs to be fixed. Ms. Schieldge suggested that the current regulation be modified to address the consequences for non-compliance.

M/ Robert Sachs S/ Xavier Martinez to:

Direct staff to work with legal counsel to draft regulatory language in order to strengthen the Board’s ability to review and approve controlled substance education courses.

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	

Public comment: Gaye Breyman, Executive Director of California Academy of PAs (CAPA), commented that CAPA has offered over 50 controlled substance education courses and they are religious about adhering to the regulatory requirements. Her suggestion is to send a PA, incognito, to attend one of the courses. CAPA confirms that the individual attending the course has their PA license. Course attendees must pass the exam with a minimum score of 65% and if they fail the exam, they are allowed to retake the exam an additional time, at a later date.

Motion approved.

9. Physician Assistant Board Budget Sub-Committee Update

Mr. Martinez stated no additional information to report since the Board met last.

10. 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 currently working with staff and their IT unit to make all information posted on their website ADA compliant. Legal documents are the most challenging as MBC can no longer use their current imaging system.
- During MBC's last board meeting, DCA gave a budget presentation. Laws governing MBC state that their budget has to remain 2-4 months of reserve and they would have to fall below four months in order to consider a fee increase. Due to an increase in salary/wages and changes with the Attorney General and Office of Administrative Hearings, MBC will be looking into conducting a fee audit within the next year in order to seek a fee increase.
- Based on consumer protection, MBC's board members tabled the topic of changing impairment related questions on the current application until board staff has an opportunity to look at what other states and allied health professionals do.
- An outpatient surgery center presentation offered during MBC's last board meeting provided information about settings that fall outside of the law. Services, if performed at a facility where the patient may lose their life preserving reflexes, that the facility has to be accredited by an accreditation agency approved by MBC, Centers for Medicare & Medicaid Services (CMS) certified or licensed by California Department of Public Health (CDPH). In 2007, any facility that was at least 1% physician owned had to be accredited or CMS certified, they weren't going to be licensed by CDPH and as result the facilities under those accreditation agencies increased.
- The board's upcoming meeting will provide an opportunity to hear about required training in order to obtain the X waiver needed to prescribe and

dispense buprenorphine. MBC will also be looking at a specific section in Substance Abuse and Mental Health Services Administration (SAMHSA) that states, if a state medical board approves a curriculum at a medical school, it can be counted as the training. She doesn't think the board will want to review all of the curriculum but if SAMHSA looked at the curriculum and were to approve it, then the board could adopt it; therefore, offering the ability for a provider to obtain an X waiver at an early date.

- Ms. Kirchmeyer stated she continues to offer CURES presentations across the state.
- MBC's website will continue to offer post-graduate training webinars through July 2019. MBC also offers pod casts on several subject matters including post-graduate training.
- The regulation package regarding supervision of physician assistants is still pending at the DCA.

In response to Ms. Earley's question regarding the level at which the opioid training would be offered, Ms. Kirchmeyer responded that the curriculum would be offered by the medical school.

PETITION FOR REINSTATEMENT

Petition for Reinstatement of Physician Assistant License – Jeffrey Michael Hamlin, License Number PA 16524 (Stipulated Surrender)

11. CLOSED SESSION

Pursuant to Section 11126(c)(3) of the Government Code, the Board moved into closed session to deliberate and take action on disciplinary matters, including the above petition for reinstatement of license.

RETURN TO OPEN SESSION

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

Mr. Grant reported that he appointed Mr. Martinez, Board member, and Bob Miller, Treasurer of CAPA, to form a subcommittee responsible for researching the process involved in order for the Board to become a fully independent board. However, due to the receipt of the initial language of SB 697, the subcommittee has been placed on hold until SB 697 moves forward. Mr. Grant clarified the move to become an independent board (part of the Board's Strategic Plan), is not a move towards independent PA practice.

Mr. Miller advised initially SB 697 included language concerning making separating the Board but that language is not part of the current legislation. In response to Mr. Martinez's question to why the language was struck from the current legislation, Mr. Miller responded they were experiencing difficulties with other language in the bill and felt it was best to remove it in order to get the bill passed and then they would address it at a later time. Mr. Grant stated that the subcommittee has the authority to

work with authors of SB 697 to restore the language or they can work on separate legislation and report back to the Board on a suggested course of action.

Mr. Grant thanked the author of SB 697, Senator Cabellero, for helping CAPA in order to provide physician assistants (PA) with a better practice act. Mr. Grant expressed concerns about the recent amendments to SB 697. First, Business and Professions Code (BPC) section 3501 (Section 2), subparagraphs (j) and (k), defines individuals who can sign a practice agreement as an organized health care system and second, if the person signing the practice agreement is in a different specialty than PA, how can the PA be properly supervised. Even though the language states that the practice agreement has to include a physician and a PA, having an administrator (other individuals or office staff) signing the agreement places them in a supervisory position.

Ms. Schieldge advised that it is illegal for artificial entities or unlicensed individuals to practice medicine in California. Artificial entities are not allowed to have any powers, rights or privileges with respect to provision of medical care and decision making. With respect to proposed BPC section 3501, subparagraph (k), states the practice agreement, which is currently defined as an agreement between a physician and PA, includes, if applicable, administrators of an organized health care system that outlines the medical services the physician assistant is authorized to perform and grants approval for physicians and surgeons on the staff of an organized health care system to supervise one or more physician assistants in the organized health care system. Ms. Schieldge stated, in her opinion, the language is conferring upon an artificial entity the authority to control the medical judgment of the physician and the PA. The “organized healthcare system” which is defined in subparagraph (j), to include clinics, outpatient settings, health facilities, county medical facilities, accountable care organizations, home health agencies, a physician’s office, and medical corporations. The use of “administrator” is troubling because it is unclear if that person is a health care provider. Her concern is that we’re allowing, what would potentially be considered the corporate practice of medicine, which means these organizations would have a say in what physician assistants can perform in terms of medical services. Another language issue is “grants approval for physicians and surgeons on the staff to supervise one or more physician assistants”, because again, they are controlling supervision and, by extension, controlling medical care.

Ms. Schieldge stated proposed BPC section 3502.3 (Section 5) talks about what the content of a practice agreement would include and again, refers to the organized health care system determining what additional provision(s) would be included in a practice agreement. It also authorizes the organized health care system to approve the practice agreement “on behalf of the staff of the physicians on the staff of an organized health care system” who would presumably be supervising the physician assistant. Ms. Schieldge’s concern is how are physicians to know if they are responsible for supervision and how would the Board enforce it when the organized system is deciding who is supervising.

Ms. Schieldge advised the first issue is the fact that the collaborative practice agreement includes an organized health care system, where the unlicensed corporate practice of medicine issue comes into play. From a legal perspective, it violates the public policy for the corporate practice of medicine because you are allowing the system to decide what medical services are performable. Corporate practice of medicine is illegal in California in order to prevent individuals, who are not

licensed to practice medicine, from determining medical care and to prevent the exploitation of corporate medicine. Ms. Schiedge stated that she is not sure why the current definition of a Delegation of Services Agreement (DSA) needs to be amended as it is an agreement between a physician and one or more PAs. The supervisor should be the one deciding what is delegated, not the entity they work for.

Gaye Breyman, Executive Director of California Academy of PAs (CAPA), commented that the vision of the practice agreement is that it would serve as an umbrella. There would be one practice agreement, PAs would be supervised appropriately and on behalf of the practice, an administrator would sign the practice agreement. There would no longer be a one on one relationship between one physician and one PA. She advised many entities already utilize a practice agreement, but because a provider may be a PA, there is the additional requirement to have a DSA tying the PA to one physician. CAPA could provide an example of a practice agreement for the practices. Ms. Breyman stated that CAPA would like to work with the Board to develop compromised language.

Mr. Grant indicated he thinks CAPA is conflating credentialing with a practice agreement or a DSA. Credentialing privileges are granted by a credentialing committee of an organization and states what the individual is allowed to do within the facility or hospital. The Board has no enforcement over credentialing but does have enforcement over the Physician Assistant Practice Act. The proposed practice agreement has no bounds on saying who can do what and where. Mr. Grant understands CAPA would like this to be determined at the practice level, but there has to be reasonable framework in place in order for this to be accomplished. For example, the bill states that the supervising physician must be available but it doesn't define available. Mr. Miller suggested using the current language from CCR section 1399.545, a supervising physician shall be available in person or by electronic communication at all times when the physician assistant is caring for the patients, in order to define available. Mr. Grant advised when laws are struck from the current Physician Assistant Practice Act, it invalidates regulations.

Mr. Armenta stated when a qualified organized health care system is listed, a home health agency is included which requires no physician whatsoever; therefore you have placed the home health agency in a position of defining the practice agreement.

Ms. Earley questioned what the original intent of SB 697 was and if it no longer Optimal Team Practice (OTP). Mr. Miller stated that the original intent of OTP was team practice and for it to be determined at the practice level, an autonomous PA board and direct reimbursement for PA services, in the both the public and private sectors insurers, to reflect PAs productivity in the practice as well as the health care arena. This bill is a fluid document, CAPA welcomes the Board's input and is working with stakeholders to determine what language will work. Ms. Breyman advised as the outcome of many meetings with physicians, physicians felt that OTP, in its purest form, is independent practice because of the removal of the word supervision. Even though CAPA disagrees, decisions were made in order to keep the bill alive. The practice agreement, in theory, was going to offer parity with nurse practitioners (NPs).

Mr. Martinez questioned why CAPA had not approached the Board earlier in the process and if the author of the bill had asked why the Board had not been brought

in. Ms. Breyman responded that Mr. Sachs and Mr. Grant provided a presentation on OTP at the Board's last meeting, the bill was introduced on all of the concepts of OTP and; thereafter, was quickly amended. The author of the bill didn't ask CAPA about why the Board was not brought in. Mr. Sachs stated he is troubled, that even though the Board is a stakeholder, they were not consulted. The introduction of the bill on February 22, 2019, was the first opportunity the Board had to view the language and since then it has been amended several times. Ms. Breyman apologized to the Board for not working with them differently.

In response to Mr. Grant's request to explain the intent behind striking so much of the current law, especially changes to the language related to prescribing, Ms. Breyman responded that some of the language was pulled directly from the nurse practitioner act in order to provide parity. Mr. Grant stated this language places additional burdens on the prescriber requiring the practice agreement to list all of the times a PA is allowed to prescribe a Schedule II drug and then each practice agreement would have to be provided to pharmacies. Mr. Grant stated the current regulation allows for the prescribing of Schedule II controlled substance with the completion of a controlled substance course whereas, the proposed language requires that the information be included in the practice agreement. Ms. Schieldge stated BPC section 3502.1 (f) (3) states PAs who hold an active license, who are authorized through a practice agreement to furnish Schedule II controlled substances, shall complete as part of their continuing education requirement, a course including Schedule II controlled substances and the risks of addiction associated with their use. The language doesn't specify the frequency; a new regulation would be required to determine the frequency. The Board's current regulation only requires that the controlled substance course be completed once.

Mr. Grant stated the bill specifies how services are performed instead of what services are performed, which is problematic. Ms. Schieldge stated BPC section 3502.3 (a) states the types of medical services a PA is authorized to perform and how the services are performed. Currently it is not a legal requirement that the physician and PA document how each service being delegated is performed, only what they are authorized to perform. Ms. Schieldge expressed concerns regarding how detailed the practice agreement would need to be and how difficult it would be for the Board to implement and for practitioners to know what to include. Mr. Miller stated that this too will need to be looked at and modified in order to bring clarity.

Mr. Grant explained PAs are trained as generalist and when they join the workforce they perform tasks and duties, determined at the practice level, that are more advanced within a specific specialty. Currently, the authority to perform those advance tasks and duties are defined and limited by the supervising physician whose specialty is consistent with the PA's. From a public protection aspect, the bill's language does not prevent a physician, whose specialty differs from a PA, from entering into a practice agreement. Ms. Earley agreed with Mr. Grant's concern. Mr. Miller advised he has noted to work on this language. Ms. Breyman stated by using an umbrella model, there would be a medical director who would ensure that a PA works within their specific standard of care; there was hope that the Board would regulate this based on standard of care like physicians do. Mr. Grant stated physicians have the benefit of residency and only practice in the specialty for which they were trained for in residency, they are not generalist and they don't have delegated authority. Ms. Breyman stated the theory was that the Board would regulate on standard of care, but she understand that this would be outside the

Board's scope of practice. This bill states that the PA wouldn't do anything that they are not capable, competent and trained to perform so the Board would regulate their standard of care.

Ms. Earley cautioned, even though this bill is moving away from OTP, to not forget about the original intent. It is Ms. Earley's opinion, as a clinical associate professor at one of the local medical schools, that even though the medical association verbally states they want to supervise, the new school of clinicians and physicians do not. The medical model precludes PAs from maximizing and moving forward in the next generation. PAs are no longer the dominant medical provider at her school due to requirement of supervision. PAs are going to be out of a sustaining profession unless there is a redesign of the Physician Assistant Practice Act.

Mr. Grant stated the question is how do we set some boundaries? From a regulatory perspective, the Board needs the ability to objectively say this is clearly wrong and outside these bounds; therefore, the Board can restrict the PA's practice. The Board would like to ensure this happens before harm is done. The wording of the current bill is problematic because there is burden without reward. Mr. Grant felt the bill's original language was pretty good; however, he was disappointed with the amount of language struck from the Physician Assistants Practice Act in the bill's most recent amendment. Ms. Breyman stated the process was carefully thought out and apologizes for not working with the Board sooner. She has heard the Board's concerns and hopes that they will be able to move forward providing CAPA an opportunity to work on the language and continue discussions offline.

Mr. Sachs stated BPC section 3502.3. (c) the methods for continuing evaluation of the competency and qualifications of the physician assistant, is wide open sentence. Mr. Miller suggested to use the current language of CCR section 1399.540, a physician assistant may only provide those medical services that he or she is competent to perform and which are consistent with the physician assistant's education, training and experience. Ms. Schieldge suggested adding the words "and with the patient's health and condition".

Ms. Schieldge expressed additional concerns with the bill's language:

- First, the bill indicates that supervision shall not be construed to require the physical presence of a physician and surgeon. The question is, should personal presence never be required under any circumstance? She expressed concerns that there may be situations where the Board, for practical reasons, wants the physician on site rather than available by electronic means. Currently, those are options for practice and it is dependent on patient care and the patient's condition. If you put a statement that is affirmative, that can never be construed to require physical presence, it undercuts the Board's ability to set those kinds of standards in certain situations. Ms. Schieldge would recommend against putting such a definitive statement unless the Board can say that in all situations, even on probation, it is not appropriate to have the physical presence of the physician.
- Second, BPC section 3502. (a) and BPC section 3502. (c) (3), strikes the Board's ability to adopt regulations to establish medical services that are performable and also the ability to set minimum supervision in regulation, with the exception of the podiatrist requirement. Ms. Schieldge recommends

retaining that authority because there may be common medical services that all PAs can perform. Ms. Breyman asked if the bill were to be signed and went into as effective January 1, 2020, would medical services be there on January 1, 2020. Ms. Schiedge responded she believes it would be difficult because the underlying statute authorizing the Board to make regulations was stricken. Essentially what would happen is that the doctors would determine what medical services PAs can perform and what level of supervision they should provide. Ms. Schiedge stated it is harder to regulate by decision, it is much easier to enforce and implement when the minimum criteria is determined by regulation.

- Third, BPC section 3502 (a) (1) and BPC section 3502.1 (e) (2) strikes the medical record requirement that states the medical record, for each episode of care for a patient, shall identify the physician and surgeon who is responsible for the supervision of the physician assistant. From a consumer protection perspective, a consumer has the right to know who is responsible for their medical care in every situation. Mr. Grant thinks this goes back to having a subset of duties outlined in the practice agreement that the PA is responsible for. It is unclear if there is a subset of duties the PA is responsible for and the physician is not responsible for, or is the physician responsible for everything a PA does, regardless. He asked if it was CAPA's idea to set aside a subset of duties that the PA can perform without the physician having responsibility or is the physician responsible for everything that the PA does. Ms. Breyman stated that in theory the physician was responsibility for ensuring the PA's competency to provide standard of care but not be responsible to the PA's acts. He believes this goes back to the original reason for the legislation, physicians are not wanting to accept responsibility for things that they have said a PA can do. When a PA consults a supervising physician, the supervising physician should be responsible. Was the intent to have a subset of duties and that is why this language was stuck?

Ms. Schiedge stated under current law BPC 3501. (b) reads, a PA acts as agent of the supervising physician, and again that's a consumer protection issue and the foundation of a couple of the Board's regulations. Ms. Schiedge's concern would be the authority for those regulations would be affected as well as not being clear about the responsibility, with the respect to the PA and physician, for the patient.

Ms. Breyman stated the language that was struck was that the PA is no longer an agent of the supervising physician because they have their own practice act and would be responsible for their own actions under the umbrella authority of the practice setting with physician; the physician would be responsible to ensure the PA meets the standard of care. Mr. Grant replied that in other parts of the bill it says the supervising physician is responsible for everything the PA does and if that is so, the language needs to remain. Ms. Breyman agreed.

Mr. Sachs stated hospitals and nurses love the language, a physician assistant practice is directed by a supervising physician and a physician assistant acts as an agent of the physician, because if a PA gives an order they are an agent of the physician. If the language is taken away, it hurts the

PA. In response to Mr. Sachs' question of whether CAPA spoke with the hospital associations, Ms. Breyman responded yes.

In response to Mr. Grant's question of if CAPA is still running this a one year bill, Ms. Breyman stated yes.

- Fourth, the statutory cap limiting a physician and surgeon from supervising no more than four PAs at any one time was struck from BPC section 3516 (b) but language was added in BPC section 3502.1 (d) to include supervising no more than six PAs but only related to prescribing. Ms. Breyman stated this is purely to provide parity with NPs as NPs only have ratios as it applies to prescribing. In response to Mr. Grant's question regarding the requirement of additional pharmacology training, Mr. Miller agreed that this would be included within a program and could not provide a reason as to why it was included. Ms. Schieldge stated language added to BPC section 3502.1 (f) (1) states that the PA has to satisfactorily complete a course in pharmacology and a Schedule II drug course to be completed upon renewal. Mr. Armenta's questioned if a new paragraph (c) could be added under BPC section 3516 (b) to give the Board the ability to restrict PAs from practicing outside the field of specialty of the supervising physician, Ms. Schieldge responded that the problem is that the regulatory authority has been stricken.
- Ms. Schieldge stated the biggest change she saw was the removal of written guidelines, counter signature and medical records review requirements. From a consumer protection perspective, it is being substituted that the supervisor physician decides how much supervision should be done depending upon the type of services that are delegated. She questioned how the Board is to discipline or review whether someone is actually being properly supervised; again supporting the need to have minimum standards to provide general basic objective criteria for supervision. Ms. Breyman responded again they were trying to allow for the level of supervision to be determined at the practice level. Ms. Schieldge stated, from a regulatory perspective, there is a need to justify control over supervision, medical services and the ability to objectively enforce criteria. Mr. Grant agrees it should be the supervising physician who determine the level of supervision but there has to be boundaries.

Ms. Earley stated PAs were created after the medical model, this needs to be enhanced moving forward. PAs are not NPs nor do they seek to be NPs. She believes the bill needs to be recrafted in order for the PA profession to thrive, not to create parity with NP legislation.

Mr. Grant advised the Board members that they need to determine if they want to take a position on the bill and to appoint someone to work with the bill's authors to amend the bill's language in order to address the consumer protection concerns identified. Ms. Schieldge added that the Board also has the option to take a position and hold an additional board meeting before the scheduled board meeting of August 9, 2019. If the Board waits until August, they will lose their opportunity to change their position.

In response to Mr. Martinez's request to explain the process involved in order to revise the amended bill back to the original bill and if it is possible that the author

could withdraw her support, Ms. Breyman responded that she is going to bring the Board's recommendations to CAPA's board and she hopes to work with someone from the PA Board in order to amend the bill before it gets to the Senate floor. The next step for the bill is to go to Appropriations, then to the Senate floor by May 31, 2019, and then to the Assembly. The sooner the Board changes their position from oppose to either support or neutral, the better. She confirmed that the author could withdraw.

M/ Robert Sachs S/ Xavier Martinez to:

Oppose unless amended with an additional caveat that between now and the August board meeting, an additional board meeting is held in Sacramento on May 20, 2019.

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.

M/ Jennifer Carlquist S/ Charles Alexander to:

Appoint and authorize Jed Grant to work with CAPA to make the requested amendments prior to the meeting on May 20, 2019.

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.

13. Regulations – Update, Discussion, and Possible Action

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

Ms. Winslow reported that the amendment has been approved by Business, Consumer Services and Housing Authority (Agency) and submitted to Office of

Administrative Law (OAL) for final filing with the Secretary of State and should be effective July 1, 2019.

Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations, Section 1399.523.5 - Required Actions Against Registered Sex Offenders

Ms. Winslow stated that as a result of enacting AB 2138, there is a need to amend CCR section 1399.523.5, in order to separate applicants who are registered sex offenders from licensees who are registered sex offenders. The proposed language amends CCR section 1399.523.5 (a), by removing the word deny, because you can't deny an individual who is already licensed and adds two paragraphs under subsection (b) to address individuals who are applying for licensure.

Ms. Schieldge stated this regulation was first adopted in 2011 based on a directive by the Department of Consumer Affairs (DCA) to implement the Consumer Protection Enforcement Initiative. DCA suggested that the healing arts boards adopt a regulation prohibiting sex offenders from being licensed, or from continuing to be licensed after they have been convicted and are required to register as a sex offender. This regulation acts as an automatic denial and an automatic revocation for licensees or applicants who are convicted sex offenders. Due to the enactment of AB 2138 the boards will not be allowed, effective July 1, 2020, to deny an applicant for licensure who has made a "showing of rehabilitation". She advised the current regulation doesn't take into account rehabilitation evidence and, at a minimum, needs to be changed to allow people who have made a showing of rehabilitation to be considered for licensure. The proposed language would still permit revocation of the license of a person who becomes a registered sex offender and deny anyone who has petitioned for reinstatement, automatically. Initial applicants, however would apply and then have to provide the Board with evidence of rehabilitation in order for the Board to determine if they could deny them a license.

In response to Ms. Earley's request to define rehabilitation, Ms. Schieldge responded CCR section 1399.526 covers applicants and CCR section 1399.527 covers licensees. The Board is required to look at a variety of factors and criteria including the nature and severity of the offense, how much time has transpired since the offense occurred, evidence of rehabilitation, expunged convictions or convictions set aside as a result of a dismissal order. These changes would not affect the Board's ability to deny someone licensure if they are a registered sex offender. It means the Board could not automatically deny them licensure without first considering their rehabilitation evidence. Ms. Schieldge stated another option is for the Board would be to repeal the proposed language, as the proposed language is just a suggestion. The Board is prohibited, under AB 2138, to deny someone who has obtained a certificate of rehabilitation, who has been granted clemency, has been pardoned by a state for federal executive, or has made a showing of rehabilitation.

Ms. Schieldge mentioned proposed changes to (b) (5) of the proposed language, which included the effective date. In addition, changes are proposed to subsection (c) to make it clear that even if someone tries to classify themselves as an applicant, when they are really a petitioner for reinstatement, the exception for "applicants" who make a showing of rehabilitation will not apply to a petitioner for reinstatement. At a minimum, applicants would be allowed to present evidence of rehabilitation, but the Board could go farther to keep the prohibition on practice for licensees or petitioners

for reinstatement because AB 2138 does not apply to those types of individuals. The regulation proposal addresses changes that will be made to the law by AB 2138 related to applicants.

Ms. Earley expressed concern in notifying the school of an applicant’s conviction, Mr. Grant stated that all schools require a background check both before the applicant matriculates and before the student enters clinical rotation. Most, if not all, clinical sites will not allow Penal Code section 290 registrants to enter rotation. Most schools have a barrier to admission, if you are a registered sex offender because the applicant will not be able to meet the education requirements.

Ms. Schiedge stated, until July 1, 2020, applicants who are registered sex offenders cannot obtain a license under the current regulation. Effective, July 1, 2020, there would be the possibility that applicants could get a license because the Board will not be able to automatically prohibit them from obtaining a license because AB 2138 requires the Board to consider evidence of rehabilitation. Licensees who are convicted as a sex offender would still be automatically revoked by the Board if these amendments were adopted.

M/ Robert Sachs S/ Sonya Earley to:

Approve the proposed regulatory text for section 1399.523.5, direct staff to submit the text to the Director of the Department of Consumer Affairs and the 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.

14. Education/Workforce Development Advisory Committee

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

- 265 program in United States
- 16 programs in California
 - 9 are located in the Los Angeles/San Diego area
 - 4 are located in the bay area
 - 2 are located in the Sacramento area
 - 1 is located on the central coast

- 5 new programs currently under development
- 704 current student capacity for California programs

Within a three year time frame, student capacity for California programs could reach 929. California has the highest number of applicants to PA programs in the United States, however California has the lowest ratio of numbers of applicants to available seats in programs. The physician assistant education program averages twenty-seven months and includes both didactic and clinical education.

In response to Mr. Martinez's questions on where Loma Linda stands in terms of their probation and how does AB 476 foreign-trained professionals relate to Touro University - Worldwide, Mr. Grant responded that Loma Linda has been on probation about eighteen months but he can't provide a reason for the probation. The program continues to accept new students, which is a good sign. Touro University – Worldwide, is an online course under development, but not yet accredited. He is unsure how this will work. There is a requirement to have an in house preceptor that trains the student interacting with live patients and the program is on the accrediting bodies website listed under California, which Mr. Grant took to mean that they will have their students working with preceptors in California.

15. Budget Update

Marie Reyes, DCA Budget Analyst, stated that all DCA programs participate in increment budgeting which means that the starting budget is the prior year's budget act; thereafter, adjustments are made based on Budget Change Proposals, executive orders, Legislative bills and budget letters. The DCA Budget Office works closely with boards and bureaus to make sure there is open communication and transparency. Included in the Board's meeting materials is a document titled Expenditure Report that reflects expenses through February 2019.

Ms. Reyes stated that the Board's budget is in excellent shape with an expected reversion of \$18,000 by the end of the year.

The Board had no questions for Ms. Reyes.

16. Report by the Legislative Committee

AB 149 – Cooper; Controlled Substances: prescriptions

Status: Enacted.

This bill delays the implementation of requirements for prescription forms as specified in AB 1753. This bill also allows pharmacists, until January 1, 2021, to continue filling prescriptions written on prescription forms that were valid prior to January 1, 2019.

AB 193 – Patterson: Professions and vocations

Status: In Assembly, referred to the Committee on Business and Professions.

This bill would require DCA to review all licensing requirements under its jurisdiction, identify unnecessary licensing requirements, and report to the Legislature by March 1, 2023, and every two years thereafter.

Mr. Grant stated that this seems problematic for DCA to be able to determine the licensing requirements for each profession. Ms. Schieldge stated that this may place the Board in an adversarial position with the DCA. She also questioned if the Board would have an opportunity to work with the DCA when developing the report in order to ensure standards are set and are consistent with the Board’s understanding of safe practice. Ms. Schieldge advised the bill requires Board’s staff to submit a report, every two years, on the Board’s progress implementing policies to facilitate licensure portability for active duty services members, veterans and military spouses. She questioned if staff has the ability to provide the required information which is the number of active duty service who applied, the number of applications that were expedited, the number of renewal fees that were waived and the number of applicants applying for licensure by endorsement. Mr. Grant stated that the Board doesn’t have control over reciprocity, and the Legislature defines the requirements for licensure.

Ms. Winslow commented that the Board does track military spouse and military veteran information within their individual BreZE account. The Board doesn’t currently waive the renewal fee.

M/ Sonya Earley S/ Xavier Martinez to:

Support if amended to remove the provisions that require the Department of Consumer Affairs to review all licensing requirements, identity unnecessary licensing requirements for the Board and report them to the Legislature.

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.

AB 241 – Kamlager-Dove: Implicit bias: continuing education: requirements

Status: In Assembly, referred to the Committee on Business and Professions.

This bill mandates that specified healing arts boards adopt regulations requiring the curriculum for continuing medical education (CME) for its licensees include instruction and testing in understanding and reducing implicit bias in treatment. The Medical Board of California, Osteopathic Medical Board, Physician Assistant Board

and the Board of Registered Nurses must all comply with the new requirements by January 1, 2022.

Ms. Schieldge expressed concern because the Board doesn't designate content and this bill would change the way the Board sets CME standards.

M/ Sonya Earley S/ Robert Sachs to:

Direct staff to send a letter to the author requesting that they contact CME providers and not require this of the boards as this is not typically regulated by the boards.

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.

AB 289 – Fong: California Public Records Act Ombudsman

Status: Amended and passed Judiciary Committee, re-referred to the Committee of Appropriations with recommendation: To consent calendar.

This bill would create a California Public Records Act (CPRA) Ombudsman who would be available to the public to review denials by state agencies of requests for public records. Thus, it seeks to establish an alternative way for members of the public to enforce their rights under the CPRA.

Ms. Schieldge stated under the current process, the Board has ten days from the date of receiving a request to indicate whether there are records responsive to the request, or whether the records are being denied. The denial needs to be based on express provisions of law or the balancing test. This bill would allow individuals to appeal to an outside agency, who could then require boards to disclose all of their records, review the records, and then order boards to reverse its decision denying the request. The Ombudsman could seek cost recovery for their services from the boards for what they consider an improper denial. It allows boards to cite express provisions of law for the reason(s) that the request was denied and the reason that the Ombudsman does not have the authority to review those provisions. Ms. Schieldge stated there is concern for being forced to release records and disclosing how the staff came to their decision for denial. She stated that this will add an additional layer of expense for the administrative appeal process; there are already judicial remedies in place.

Mr. Armenta stated that this isn't directed at the Board, it can be problematic with certain state agencies so this is meant to streamline the process.

The Board took no position.

AB 312 – Cooley: State government: administrative regulations: review

Status: In Assembly, on April 3, 2019 in the Committee of Appropriations. Placed in suspense file.

This bill would require state agencies, including departments, board and bureaus, to conduct a one-time review of regulations and identify those that are duplicative, inconsistent or out of date. The agencies would then be required to appeal, reconcile or eliminate those regulations and report their findings and actions to the Governor and Legislature by January 1, 2022.

Ms. Schieldge stated that this bill has a huge fiscal impact to all agencies. In response to Mr. Martinez's request to clarify suspense file, Ms. Schieldge responded that it has to get through appropriations.

The Board took no position.

AB 358 – Low: Sexual assault forensic examination kits: databases

Status: In Assembly, re-referred to Committee on Appropriations with recommendation: To Consent Calendar.

This bill would require a law enforcement agency that has investigated the case involving the collection of sexual assault kit evidence to create an information profile for the kit only if one does not currently exist. This bill would require each city, county, city and county, or state laboratory that participates in the California Combined DNA Index System (CODIS), upon notification by the department that a CODIS hit has occurred for forensic evidence collected by the sexual assault kit, to enter CODIS Hit Outcome Project (CHOP) database the information required by the department and to report to the department, as required by the department, the status and outcome of its investigative leads. By expanding the duties of the local agencies, this bill would impose a state mandated local program.

Ms. Schieldge stated she has been asked what relevance this would have for the PA profession. She identified that the Department of Justice would have to develop a system to allow a health care provider, who performs these types of sexual assault examinations, to be able to update the status once the kit has been submitted for their patient. Also, at the discretion of the PA who has performed the exam, it allows the PA to obtain a unique login in for the victim to track whether there have been any DNA hits. She stated there would be some effect on the PAs who perform these examinations but it would be pursuant to a program the Department of Justice puts together. The Department of Justice would have to report on the implementation of the program by 2021 and then all of the counties and cities would be on board by 2023.

Board took no position.

AB 476 – Rubio: Department of Consumer Affairs: Task Force: Foreign-trained Professionals

Status: In Assembly, on April 3, 2019, in the Committee of Appropriations. Placed in suspense file.

This bill would require the Department to establish a task force to study the workforce integration of foreign-trained professionals. The task force would be required to solicit input from a variety of government agencies, including in state and out-of-state entities.

Ms. Schieldge stated one of the tasks of the task force would be to evaluate whether any of the boards' licensing standards are a barrier to integrating foreign-trained professionals into the licensed workforce. This is just a concept for a study at this point.

Board took no action.

AB 521 – Berman: Physician and Surgeons: Firearms: Training

Status: In Assembly, passed out of Assembly Public Safety. Referred to Committee of Appropriations.

Ms. Schieldge stated initially this bill was going to assist PAs in dealing with firearm related injuries and death but then it was amended April 10, 2019, and it is now a study for the University of California.

AB 544 – Brough: Professions and vocations: inactive license fees and accrued and unpaid renewal fees

Status: In Assembly, re-referred to the Committee of Business and Professions.

This bill would limit the maximum fee for the renewal of a license in an inactive status to no more than 50% of the renewal fee for an active license. The bill would also prohibit a board from requiring payment of accrued and unpaid renewal fees as a condition of reinstating an expired license.

Ms. Schieldge stated this bill would have a direct effect on the Board's budget line item. Currently, the Board charges the full renewal fee for an inactive status and the only benefit for inactive status is not having to complete CMEs. The Board would lose 50% of the renewal fee in addition to losing all authority to charge a delinquency fee for an expired license.

Mr. Grant commented that currently the Board has 1,835 licenses with a delinquent status, which equals 10% of total licensee population. Licensees can stay in a delinquent status for five years before their license cancels. Mr. Grant suggested opposing this bill because of the significant revenue loss to the Board and if the licensee doesn't want to pay the fees, they can reapply in five years once the license has canceled.

M/ Jed Grant S/ Xavier Martinez to:

Oppose AB 544.

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.

AB 613 – Low: Professions and vocations: Regulatory Fees

Status: In Assembly, scheduled for hearing on April 2, 2019, in the Committee of Business and Professions.

This bill would authorize programs within the Department of Consumer Affairs to increase their fees every four years in an amount not to exceed the increase in the Consumer Price Index in the last four years. Fees increased pursuant to this bill would be exempt from the Administrative Procedure Act (APA).

Ms. Schieldge stated she likes the idea of an automatic increase without regulations and that the Legislative analysis says a program can still submit an APA rulemaking to go above the Consumer Price Index if the programs determines a need. She would like the bill's text to says notwithstanding, a) the Consumer Price Index authority to increase every four years if a program needs to adopt a regulation beyond that cap, the program would be authorized to use the APA when needed to increase the fee above the CPI.

M/ Robert Sachs S/ Xavier Martinez to:

Support if amended to include the ability to increase fees due to operational needs via the Administrative Procedure Act.

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.

AB 890 – Wood: Nurse Practitioners

Status: In Assembly, re-referred to the Committee on Appropriations.

This bill would authorize a nationally certified nurse practitioner (NP) to provide specified medical services without physician supervision if the NP, among other things, works in specified integrated or organized health settings or the NP meets specified education requirements and completes a three transition to practice program.

Ms. Schieldge stated that on April 22, 2019, major amendments were made to this bill and the majority of the text was replaced with language stating if the NP wants an advanced practice license, they would have to get licensed by a brand new Advanced Practice Registered Nursing Board with a new examination, meet a new 4,600 hour transition to practice requirement and possess professional liability insurance.

Board took no position.

AB 1184 – Gloria: Public Records Retention: writing transmitted by electronic mail

Status: In Assembly, passed the Judiciary Committee. Referred to Appropriations.

This bill addresses the question of how long public agencies must retain electronic writing or emails. Governmental Code section 34090 prohibits city departments from destroying public records that are less than two years old.

Ms. Schieldge stated this would prohibit the deletion of emails for two years. Every program within the DCA is allowed to develop a retention schedule and also has an electronic mail retention schedule. This bill would not allow programs to set their own retention schedule for emails resulting in an additional expense for programs.

M/ Xavier Martinez S/ Sonya Earley to:

Oppose bill due to costs.

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.

AB 1819 – Committee on Judiciary: Public Records: use of requester’s own equipment

Status: In Assembly, passed Judiciary Committee. Referred to Appropriations.

This bill merely clarifies that a member of public has the right, under the CPRA, to make a copy of a public record on the premises of the agency by using their own equipment without paying a fee.

Ms. Schieldge stated that this is existing law, an agency cannot charge a fee if they bring their own copier. The only time an agency can charge a fee is if they ask the agency to prepare and mail the copies.

Board will continue to watch this bill.

SB 53 – Wilk: Open meetings

Status: In Assembly. After the first reading is Held at Desk.

This bill will revise the Bagley-Keene Open Meeting Act regarding state body-created advisory committees by requiring two member advisory committees to hold open and public meetings if one or more of the advisory committee members is a member of the larger board, committee or commission, and the advisory committee is supportive either wholly or partially by state funds. The purpose of this bill is to make the Bagley-Keene Act mirror provisions of the Ralph M. Brown Act, which governs local governments' open meetings.

Ms. Schieldge stated that under current law an advisory committee meeting must be noticed when the committee members total three or more persons. The reason there is not a requirement to notice a two-person advisory committee is because the committee is required to report back to the board, the board then has to discuss the committee's findings and take action, and the public has an opportunity to comment at that time. This bill would impact the Board's current Legislative Committee, Education Workforce Development Committee and the executive officer recruitment process. A similar bill has been vetoed in the past.

M/ Sonya Earley S/ Jennifer Carlquist to:

Oppose as the Board utilizes a two person committee that has no decision making ability and is required to report back to the Board at a public meeting.

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

SB 425 – Hill: Health Care practitioners: Licensee’s file: probationary physician’s and surgeon’s certificate: unprofessional conduct

Status: In Senate, scheduled for hearing April 8, 2019, with the Committee on Business, Profession and Economic Development

This bill would require to expand sexual abuse reporting requirements for the healing arts licensees and their employees.

Ms. Schieldge stated this a new reporting requirement. The bill states that an employee or a healing arts licensee that works in any health facility or clinic, health care service plan or other entity and has knowledge of any allegation of sexual abuse or sexual misconduct by a healing arts licensee, shall file a report within 15 days of knowing about the allegation of sexual abuse or sexual misconduct with the agency that has regulatory jurisdiction over the healing arts licensee and the administration of the health facility or clinic, health care service plan or other entity. Willful failure can result in a fine up to \$100,000 or negligent failure a fine up to \$50,000 per violation. Ms. Schieldge stated that it would be a pretty significant authority that would affect all healing arts licensees.

Mr. Armenta stated that this puts the Board in a position of being adjudicators of whether the initial accusation is sufficiently valid to trigger the duty and failure to fulfill that duty is willful.

M/ Jed Grant S/ Juan Armenta to:

To watch the bill and send a letter of concern to the bill’s author regarding the bill’s ambiguity and the possibility of unintended consequences of assessing people based on an ambiguous standard that might cause serious litigation and enforcement problems for the Board.

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.

SB 518 – Wieckowski: Public Records: disclosure: court costs and attorney’s fees

Status: In Senate with Appropriations Committee, awaiting hearing date

This bill requires a public agency, defined to mean a state or local agency, to make its public records available for public inspection and to make copies available upon request and payment of fee, unless the public records are exempt from disclosure.

The act makes specified records exempt from disclosure and provides that disclosure by the state or local agency of the public record that is otherwise exempt constitutes a waiver of the exemptions.

Ms. Schieldge stated this bill seeks to prevent state agencies from using Code of Civil Procedure section 998 - Offer Process. Under section 998 (c) of the Code of Civil Procedure, if an offer is made to someone who is suing you and they fail to obtain a more favorable judgment they lose the right to get attorney's fees and costs and sometimes have to pay the defendant's attorney's fees and costs.

Board agreed to watch bill.

SB 615 – Hueso: Public Records: disclosure and litigation requirements

Status: In Senate Judiciary Committee, awaiting a hearing date

This bill would require a person to meet and confer in good faith with the agency in an attempt to informally resolve each issue before instituting any proceeding for injunctive or declarative relief or writ of mandate. The bill would require the person or their attorney to file a declaration stating that this has occurred at the time that proceedings are instituted.

Ms. Schieldge stated the concept is to the Board's advantage to try to resolve the issue with the Board before filing a law suit.

Board will continue to watch bill.

SB 1109 (Ch. 693, Stats. 2018) – Bates: Controlled Substances: Schedule II drugs:opioids

Status: Enacted.

This bill amends the existing mandatory continuing education course content requirements for physician and surgeons, physician assistants, certified nurse midwives, nurse practitioners, dentists, osteopathic physicians and surgeons and optometrists.

Ms. Schieldge stated this bill didn't really change anything for the Board.

17. Agenda Items

May Meeting

- 1) SB 697

August Meeting

- 1) Controlled substance course regulation update
- 2) Regulations updates
- 3) Legislative proposal for fee increase
- 4) Pending Legislation

M/ Jed Grant S/ Juan Armenta to:

To adjourn meeting.

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 no further business the meeting was adjourned at 5:35 p.m.

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