

MEETING MINUTES

January 13, 2020
PHYSICIAN ASSISTANT BOARD
2005 Evergreen Street
Hearing Room #1150
Sacramento, CA 95815
9:00 A.M. – 5:00 P.M.

1. Call to Order by President

President Grant called the meeting to order at 9:00 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

Staff Present: Maureen L. Forsyth, Executive Officer
Kristy Schieldge, Attorney IV
William Maguire, Attorney
Julie Caldwell, Administrative Analyst
Sarah Fletcher, Licensing Analyst
Rozana Khan, Enforcement Analyst
Kristy Voong, Probation Monitor
Anita Winslow, Lead Licensing Analyst

3. Approval of November 4, 2019 Meeting Minutes

M/ Sonya Earley S/ Javier Esquivel-Acosta to:

Approve the November 4, 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				

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).])

Teresa Chien, Executive Director of California Academy of PAs (CAPA), introduced herself as CAPA’s new Executive Director. On behalf of their board and lobbyists, she looks forward to working with the Physician Assistant Board (Board) on matters affecting PAs and the implementation of SB 697.

5. Nomination and Election of Physician Assistant Board Vice President

Mr. Grant stated that Mr. Martinez, elected as vice-president during the November 2019 Board meeting, was not reappointed; therefore, there is a vacancy and the Board is tasked with nominating a new board vice-president.

M/ Jed Grant S/ Sonya Earley to:

Nominate Mr. Alexander to serve as the Board’s vice-president for 2020.

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				

Mr. Grant presented Mr. Martinez with a jacket embroidered with the PA Board’s logo in recognition and gratitude for his service. Mr. Martinez thanked the Board, stating it has been an honor to serve.

Motion approved.

No public comment.

6. Reports

a. President’s Report

Board Member Appointments

Mr. Grant reported that he received reappointment confirmation from the Governor’s office and is excited to continue his service. Several Board members have entered their grace year in 2020, and he is hopeful for their reappointments.

Mr. Grant thanked Ms. Schieldge for her service as the Board’s legal counsel and introduced William Maguire, who will serve as the Board’s legal counsel, during Ms. Schieldge’s leave of absence.

Board's Sunset Report to Legislature

Mr. Grant reported that staff completed work on the Sunset Report (Report), the Report is a public document and has been filed with the Legislature. The Report reflects where the Board is, what the Board is working on and objectives moving forward that include budget changes due to the growth of the PA profession. The Board will continue to work with the Legislature regarding the information contained within the Report. He thanked staff for their outstanding work on the Report.

Ms. Schieldge asked if Mr. Grant, or Ms. Forsyth, would explain the next phase(s) of the legislative process. Ms. Forsyth advised the next steps to be: 1) Board will meet with Legislative staffers to discuss the information contained within the Report, 2) Legislative staff will provide the Board's staff with a background paper identifying issues for fact checking and review, and then the Board will go before a Legislative hearing sometime in March.

Ms. Schieldge stated that she believes the executive officer, Board president and vice-president attend the hearing.

b. Executive Officer's Report

New Counsel Assignments

Ms. Forsyth welcomed Mr. Maguire as the Board's legal counsel. Mr. Maguire joined the Department of Consumer Affairs (DCA) in December 2019. Mr. Maguire's clients include the Physician Assistant Board, Dental Hygiene Board and Private Postsecondary Education. Mr. Maguire served as counsel for the California Public Utilities Commission from 2017-2019 where he advocated on behalf of California rate payers for the lowest possible energy, telecommunication, water and transportation rates consistent with safe and reliable service. Mr. Maguire served as an energy regulator analyst at the California Department Utilities Commission from 2013-2017. Mr. Maguire has operated his own solo practice and worked with several Sacramento area private law firms. Mr. Maguire received his law degree from Hamlin University School of Law in Saint Paul Minnesota and a BA in film from the University of Wisconsin. While in law school, Mr. Maguire published and edited for the Law Review, won a writing award in the William C. Vis International Commercial Arbitration Moot Court and clerked at a plaintiff's consumer employment law firm in Minneapolis.

Ms. Forsyth introduced and welcomed Karen Halbo, DCA Legal Affairs Regulation Attorney. Ms. Halbo joined DCA as a regulation attorney in October of 2019. Her clients include the Physician Assistant Board, Medical Board, Osteopathic Medicine Board, Naturopathic Medicine Committee, Respiratory Care Board and Speech-Language Pathology and Audiology and Hearing Aid Dispensers Board and Veterinary Medical Board. Ms. Halbo worked for 21 years as a civil litigator in the bay area and in Sacramento lien insurance defense, construction litigation and some plaintiffs work. Ms. Halbo has a Bachelor of Arts in political science with departmental honors from Stanford University, a Juris Doctor from Hastings College of the Law and a

Masters in counseling from Cal State University Hayward, now called Cal State University East Bay. Before joining the Legal Affairs Regulations Unit, Ms. Halbo spent four years with the California Department of Public Health Center for Health Care Quality License and Certification Policy Section as a regulations writer. Ms. Halbo began her state career at the Board of Pharmacy in 2014 as a legislative/regulations analyst after taking an eight year break from her legal career to raise three daughters and care for her aging parents.

Staffing and Potential Office Space

Ms. Forsyth reported that she anticipates relocating staff to a new suite within 2005 Evergreen Street, by the end of February. The new office location offers twice the square footage and will accommodate additional staff members authorized in the Board's Budget Change Proposal (BCP) included in the Governor's FY 2020-21 budget. With the addition of new staffing positions, the Board moves closer to achieving one of the strategic goals for FY 2019-23, of becoming fully independent of the Medical Board of California (MBC). Ms. Forsyth thanked Ms. Firdaus and Ms. Reyes for their work on the BCP.

Ms. Forsyth reported that interviews for the Office Technician position are scheduled for this week.

Diversion Program Contract

Ms. Forsyth reported that the five-year diversion contract was awarded to MAXIMUS.

Mr. Armenta commented that it is his understanding that MAXIMUS is the only service provider available to the DCA. Ms. Forsyth confirmed.

c. Licensing Program Activity Report

Ms. Fletcher reported the following licensing activity beginning October 19, 2019 through January 3, 2020:

- Current licenses – 13,440
- Current/Inactive licenses – 38
- Delinquent licenses – 1,950
- Retired licensees - 49
- Initial applications received - 274
- Initial licenses issued – 257
- Licenses renewed – 1,206

Pending Application Workload

- Initial Applications – 258
- Average desk age for applications – 54 days
- Average application age – 60 days

Twenty-six of the pending applications are not assigned to a staff member because the applications were submitted without payment. The following numbers reflect the removal of applications received without payment:

- Average desk age for applications – 41
- Average application age – 49

The desk age is the average number of days the application is assigned to a current staff member. The average application age is the number of days since the date the application was received. These numbers differ slightly as it may take a few days for the application to be assigned.

- Applications pending for 0-30 days – 112
- Applications pending for 31-60 days – 76
- Applications pending for 61-90 days – 10
- Applications pending for 91+ days - 60

Licensing Performance Measures

- Completed applications* – 75
- Average processing time – 34 days
- Incomplete applications** - 182
- Average processing time – 66 days

* At the time of the initial application review, all of the requirements were met.

**At the time of the initial application review, all of the requirements were not met.

In response to Mr. Grant's request to explain why the Board is exceeding the target goal of 20 days to complete an application, Ms. Fletcher responded that the 20 day target goal was established in 2013. Since she began working with the board, the goal has been 30 days to complete the initial application review.

In response to Mr. Grant's request to explain the steps staff takes to update applicants whose applications are incomplete, Ms. Fletcher responded that a deficiency letter is sent to the applicant upon completion of the initial application review. When time permits, she contacts applicants, whose applications are static, to confirm if the applicant is still interested in pursuing a license. She recently issued 19 refunds of the initial licensing fee to applicants no longer interested in obtaining a California license. The reasons given for withdrawing the application vary from "took a position out-of-state" to "no longer interested". Staff also contacts individuals who submit applications without payment, explaining that the application will not be reviewed until the application fees are paid. Applications with a desk age of 91 days or more include applicants who have not paid, who have criminal history, who have multiples licenses and are awaiting verifications of those licenses, have applied much earlier than they actually anticipated being licensed, or haven't submitted the required documents.

Mr. Grant stated that as someone who works in PA education, programs suggest to their students to apply right away and questioned if outreach, by the Board, would be beneficial to address issues that may arise due to applying too early. Ms. Fletcher stated that a lot of applicants have the misconception that everything has to be completed before submitting their application and this delays the process for the applicant because they still have to wait for their application to be reviewed.

Ms. Forsyth stated that outreach will be a focus of the Board in the near future.

d. Diversion Program Activity Report

Ms. Forsyth reported the following diversion activity as of December 31, 2019:

- Total number of participants currently in the program - 11
- Total number of participants since inception – 156

e. Enforcement Program Activity Report

Ms. Khan reported the following enforcement activity beginning October 1, 2019 through December 31, 2019:

- Complaints – Intake
 - Complaints received – 95
 - Assigned to desk analyst (**may include cases received in previous quarters) – 113
 - Pending at intake – 1
- Complaints and Investigations
 - Complaints referred for investigation – 10
 - Complaints and investigations closed** – 115
 - Complaints pending at desk analyst** – 118
 - Investigations pending at field** – 101
 - Average age of pending investigations** – 412 days
 - Investigation over 8 months old - 45
- Office of Attorney General Cases
 - Cases initiated – 8
 - Cases pending** - 44
 - Average age of pending cases** - 474 days
- Formal Actions Filed/Withdrawn/Dismissed
 - Accusations filed – 6
- Administrative Outcomes/Final Order
 - Placed on probation – 5
 - Revoked - 2
 - Surrender – 2
- Current Probationers
 - Active – 62
 - Tolling – 6
- Citations and Fines (July 1, 2019 to September 30, 2019)
 - Pending – 5
 - Fines due - \$1,500

- Citations and Fines (October 1, 2019 to December 31, 2019)
 - Issued – 8
 - Withdrawn – 2
 - Resolved - 1
 - Pending – 5
 - Fines issued - \$5,750
 - Fines withdrawn - \$500
 - Fines received - \$1,000
 - Fines due from previous/current quarters- \$5,750

Complaints Received by Type and Source

Ms. Khan reported the following activity beginning October 1, 2019 through December 31, 2019:

- Complaints received – 220

In response to Ms. Earley’s question of payment procedures for cite and fines, Ms. Khan responded that licensees have 30 days to appeal the process and if they don’t appeal, they have 60 days to satisfy the fine. If the licensee does not pay the fine, the Board will place a hold on their renewal of the license and they will not be able to renew until they satisfy the fine. The Board can also refer the licensee to Franchise Tax Board (FTB).

Mr. Grant commented that the FY 2019-20 report looks similar to FY 2018-19 with the exception of the type labeled “Fraud”, and asked if Ms. Khan could provide a reason for the increase. Ms. Khan stated that when complaints are captured, they are coded by the MBC, but it doesn’t necessarily mean that there was an outcome of the complaint.

In response to Mr. Armenta’s question of if the average age of pending cases with the Attorney General is increasing, decreasing or static, Ms. Khan responded that the average age has decreased; the target for the average age of pending cases is 540 days.

Ms. Schieldge advised that the Board has three options regarding the enforcement of the citation and fine:

- The Board can place a hold on the licensee’s account preventing renewal.
- Refer the licensee’s unpaid fine to FTB. The Tax Intercept Program, available to state agencies, allows the state agency to intercept a tax refund to a licensee and divert it to the agency when there is money owed to the state agency.
- File an accusation to revoke the license because the licensee has not complied with the order of abatement.

Ms. Khan stated that the Board has not utilized the Tax Intercept Program as the hold preventing renewal has been effective, but the Board does have a liaison with FTB.

7. Department of Consumer Affairs (DCA)– Director’s Update

Breanna Miller, Department of Consumer Affairs Board and Bureau Services, thanked the Board for the opportunity to provide the following report:

- On October 8, 2019, Governor Newsom appointed Kimberly Kirchmeyer as Director of the Department of Consumer Affairs (DCA). Ms. Kirchmeyer began her career with DCA 30 years ago and has served in various positions within DCA. Ms. Kirchmeyer’s stated priorities include the time frame for processing regulations, obtaining FISCAL reports for the department, decreasing the time frame to perform investigations, working on ADA compliance issues, and ensuring all legislation is implemented with the boards and bureaus within the department. Ms. Kirchmeyer held her first directors quarterly meeting with all board and bureau leadership on December 16, 2019. This meeting had a great turnout and robust discussions on an overview of some current DCA initiatives, a presentation from Deputy Secretary Lela Mara Sheedy on board appointments and a presentation on AB 2138 implementation provided by the Senior Assistant Attorney General from the Department of Justice. Ms. Kirchmeyer endeavors to hold one-on-one meetings with all DCA boards and bureaus to learn more about goals and issues each is facing once the executive team is staffed.
- DCA’s Legal Office has created a Regulations Unit to directly assist in the processing of departmental rulemaking proposals. To date, the Regulations Unit is fully staffed and all DCA programs have been assigned a regulations attorney. A priority of the Regulations Unit is the processing of regulations to implement AB 2138. DCA, with the assistance of the Regulations Unit, is proactively tracking the execution of boards and bureaus rulemakings with goal of achieving full compliance by the July 1, 2020 deadline. To improve transparency and efficiency in the processing of regulations will be the use of Share Well, a data system that will track regulation submissions and progress so that programs can monitor the status of the regulation package. DCA is currently working on development of this system and additional updates will be provided.
- DCA’s Budget Office and Office of Information Services are in in the testing phase of a project that will allow programs to access budget expenditure reports on a similar schedule and to a similar level of detail as the previous Cal Star reports. Staff is utilizing data that is extracted from FISCAL and is combined with budget information in the QBIRT system to create a monthly view of program expenditures compared against budgets. The plan is to release the new expenditure reports in early 2020 for FY 2019-20. Eventually these reports will be able to be run on demand through QBIRT. Revenue reporting efforts have just commenced and we anticipate release a month after expenditure reports are released.
- DCA has identified dates and locations for the 2020 Board Member Orientation trainings, the first of which will take place on March 25th in Sacramento. Thereafter, DCA will host training in June in southern California and again in Sacramento in October. Newly appointed and reappointed board

members are required to this training within a year of their appointment or reappointment date.

All employees and board members were required to complete the sexual harassment prevention training during 2019. DCA is thankful for the Board's efforts in doing so.

Form 700 filings are due April 1, 2020. Under the conflict of interest regulations, U.S. board members are designated appointees and are therefore required to complete a Statement of Economic Interest, Form 700. Moreover, you are required to file even if you have no reportable interests. Departmental filers may use the Net File system to file electronically. Questions regarding Net File may be directed to Jill Johnson, DCA's Conflict of Interest Filing Officer. Specific questions regarding filing requirements may be directed to Michael Santiago, DCA's designated Ethics Officer.

- Sunset hearings are not yet scheduled for 2020. DCA remains committed to offering support to the Board in preparing for these reports and will continue to communicate with 2020 sunset programs as more information becomes available. In addition, DCA will be setting up meeting with all programs undergoing sunset review this year to discuss issues and help prepare for the hearings.
- Organizational Improvement Office (OIO) provides DCA programs change management services, business process mapping and information technology system requirement documentation. In addition, OIO provides collaborative consulting on process reengineering that maximizes utilization of existing resources, improves productivity and increases quality. Examples of work performed by OIO include review of DCA centralized services, conducting legislative mandate reviews of DCA services to identify opportunities to achieve efficiencies that include Legal Affairs Divisions, Division of Investigations, Office of Information Services service desk and the Office of Human Resources. OIO is currently working with nine boards and bureaus to document and analyze their processes. This work endeavors to streamline procedures, produces artifacts and help develop future IT systems and create new training tools.

8. 2020 Board Meeting Dates and Locations

Mr. Grant stated that staff has requested that the November 2, 2020 board meeting be moved to November 9, 2020, in order to capture and include data through October 2020 in their reports.

M/ Jennifer Carlquist S/ Sonya Earley to:

Change the November 2, 2020, Physician Assistant Board meeting date to November 9, 2020.

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				

Mr. Grant stated that in the past, the August meeting was held in conjunction with CAPA in San Diego to allow licensees access to attend the Board meeting. CAPA will not be holding their annual conference in August this year, but rather in October. Since the Board is required to hold one (1) Board meeting in southern California annually, the meeting date and location needs to be determined. Mr. Grant asked for the Board's input.

Ms. Earley stated that she is affiliated with the Southern California University of Health Sciences and they have given her permission to extend an invitation to the Board to hold the August 7, 2020 meeting at their Whittier, California campus. On behalf of the Board, Mr. Grant accepted the invitation to hold the August 7, 2020, meeting at Southern California University of Health Sciences in Whittier, California.

Motion approved.

No public comment.

9. Report on Medical Board of California Activities

Christine Lally, Interim Executive Director for MBC provided the following update:

Next Quarterly Board Meeting

The Medical Board of California will hold its first Quarterly Meeting of 2020 on January 30 and 31, 2020 at the Double Tree Hilton Hotel at 2001 Point West Way, Sacramento. Upon the conclusion of the Board Meeting on Friday, January 31, 2020, the Board will hold an Interested Parties Meeting for the Board to seek constructive recommendations for improvement from the public and provide updates since the last Interested Parties Meeting held on February 1, 2019. The 2020 Quarterly Board Meeting schedule is available on the Board's website. The Board is scheduled to meet in Southern California on May 7-8; on August 12-14 in the Bay Area; and on November 12-13, 2020 in Southern California.

Executive Director Recruitment

The Board began the recruitment process for the Executive Director position in November 2019. At the upcoming Quarterly Board Meeting, the Board will interview candidates for the position in closed session.

Fee Study

The Board contracted with CPS HR Consulting in the Fall of 2019 to conduct a fee study to determine the appropriate levels by which to raise licensing fees. CPS HR Consulting will present its report and recommendations to the Board at the upcoming Quarterly Board Meeting in Sacramento. The Board will need to seek legislation to increase the Board's fees. The last fee increase was passed in 2005.

January 1, 2020 Licensing Program Changes

In October of 2017, Senate Bill 798 (Hill, Chapter 775) was signed by Governor Brown revising the postgraduate training and licensing requirements for physicians and surgeons, and supporting the Board's mission of consumer protection. Effective January 1, 2020, all applicants, regardless of whether the medical school attended was domestic or international, are required to successfully complete 36 months of postgraduate training accredited by either the Accreditation Council for Graduate Medical Education (ACGME), Royal College of Physicians and Surgeons of Canada (RCSPC), or College of Family Physicians of Canada (CFPC) that includes four months of general medicine. Applicants will need to complete 24 consecutive months of training in the same program in order to be eligible for a physician's and surgeon's license in California.

Additionally, a Postgraduate Training License (PTL) will be required for all residents participating in an ACGME accredited postgraduate training program in California in order to practice medicine as part of their training program. A PTL must be obtained within 180 days after enrollment in the program and will not be required to be renewed. The profile of a holder of a PTL will be displayed on the Board's website for public view. Any resident participating in an ACGME accredited postgraduate training program at the time the law goes in effect, and who is not eligible for licensure, will need a PTL by June 30, 2020, to continue in the training program.

The new PTL applications are available on the Board's website and online through the BreEZe system. To date, the Board has received 64 PTL applications. The Licensing Program (Program) management team and staff continue to work with current applicants and programs on any questions that arise regarding the new postgraduate training requirements.

January 22, 2020 Hearing on Proposed Regulatory Action Regarding Substantial Relationship and Rehabilitation Criteria

The Board received a request for a hearing on its regulations to implement Assembly Bill 2138 regarding substantial relationship and rehabilitation criteria. The regulations hearing is scheduled for 9:00 a.m. on January 22, 2020 in the hearing room of the Evergreen Building (2005 Evergreen Street, Sacramento, CA). The hearing agenda, regulations notice, text and initial statement of reasons are available on the Board's website.

Discipline Complaint Unit

Valerie Moore, the Board's long time Staff Services Manager of the Discipline Complaint Unit (DCU) retired on December 31, 2019. The Board is grateful for the many years of service and hard work Ms. Moore dedicated to the Board to make DCU a successful and high performing unit. The Board welcomed Mary Kathryn Cruz Jones as the new DCU Staff Services Manager. Prior to joining the Medical Board in 2017, Mary Kate worked in the private sector. She earned a Bachelor of Arts degree from UC Davis and is nearing completion of her masters in Policy and Public Administration at CSU, Sacramento.

Ms. Earley asked for confirmation of if an intern should fill out the residency application within the first six months of the training year. Mr. Grant commented that due to SB 798, postgraduate training and licensing requirements have been revised. With recognition that an individual graduating from medical school is not the same as being residency trained, applicants are now required to apply for a limited

postgraduate training license. Mr. Grant stated that this is of particular interest to the Board and the PA profession in terms of how PAs are trained, because PAs aren't required to complete formal postgraduate training.

10. Regulation Hearing, Discussion and Possible Action to Amend Sections 1399.525, 1399.526 and 1399.527 of Division 13.8 of Title 16 of the California Code of Regulations

a. Regulatory Hearing on Amendments to Substantial Relationship Criteria and Rehabilitation Criteria for Denials, Reinstatements, Suspensions and Revocations, Sections 1399.525, 1399.526 and 1399.527 of Division 13.8 of Title 16 of the California Code of Regulations

The Board President, Jed Grant, introduced himself and stated the following:

Today's date is January 13, 2020 and this hearing is beginning at approximately 10:00 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 1399.525, 1399.526 and 1399.527 of Title 16 of the California Code of Regulations as described in the notice published in the California Regulatory Notice on November 15, 2019.

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 amendments 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 Sections 1399.525, 1399.526, and 1399.527 – Substantial Relationship Criteria and Rehabilitation Criteria for Denials, Reinstatements, Suspensions and Revocations

Mr. Grant stated that these regulations relate to how the Board is implementing AB 2138, effective July 1, 2020.

Ms. Winslow stated that the regulations have been updated based on the criteria of AB 2138 and how the Board can deny a license based on criminal conviction.

Ms. Schieldge stated that the three regulations touch on substantial relationship criteria because, by law, a Board cannot deny or discipline a license unless it's substantially related to the practice of medicine. Regulations 1399.526 and 1399.527 deal with what the Board, on a standard basis, considers in terms of rehabilitation for denials, reinstatements, or discipline.

Ms. Schieldge stated that there are almost 40 regulations packages that will be submitted by various DCA boards and bureaus, to implement these same changes that the Board is implementing. One of the boards had their regulatory package reviewed by the Office of Administrative Law (OAL) and the OAL indicated that there may need to be some further changes including changing Sections 1399.526(b) and 1399.527(b), to further clarify the differences between subdivisions (a) and (b). Using Section 1399.526 as an example, subdivision (a) covers the criteria the Board uses to analyze whether someone's rehabilitated if they have a substantially related criminal conviction. Subdivision (b) was intended to cover all the other bases for denial that the Board may encounter, which may include unprofessional conduct or professional misconduct in another state. The way that subdivision (b) was originally drafted is, if subdivision (a) is inapplicable, meaning it doesn't involve a crime, then the board would use the criteria listed in subdivision (b).

Ms. Schieldge stated that OAL indicated using the words "if subdivision (a) is inapplicable" may not be specific enough and would instead like to spell out the legal basis for denial to be clear that there are other basis for denial, including criminal convictions. In some cases, people are denied for a variety of reasons including dishonest acts, gross negligence, or unlicensed activity; it is not just crimes. OAL would rather have text that says "if the applicant has not completed the criminal sentence at issue without a violation of parole or probation, the board determines the applicant did not make a showing of rehabilitation based on the criteria of subdivision (a), the denial is based on professional misconduct or the denial is based on unprofessional conduct, then the following criteria shall apply". Instead of using a general statement to explain the differences between subdivisions (a) and (b), OAL would like it spelled out.

Ms. Schieldge stated the board, whose regulation package is currently under review with OAL, has not had this text approved, but OAL believes that the changes she just mentioned are technical, non-substantive cleanup. Ms. Schieldge believes that if the Board modifies a delegation in the current motion, giving the executive officer the authority to make technical cleanup changes, the Board could continue with finalizing their rulemaking during this meeting.

M/ Juan Armenta S/ Sonya Earley 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, authorize the Executive Officer to make any non-substantive changes to the proposed regulations, and adopt the proposed regulations at Sections 1399.525, 1399.526 and 1399.527 as originally noticed and with any non-substantive changes authorized by the Executive Officer.

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				

Motion approved.

No public comment.

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.

RETURN TO OPEN SESSION

11. Overview of Federation of State Medical Boards, Physician Assistant Licensure Stakeholder Meeting on November 21, 2019

Mr. Grant provided the following report regarding his attendance at the stakeholder meeting held in Washington D.C. on November 21, 2019:

The Federation of State Medical Boards (FSMB) is working on developing an interstate compact where licensing can be executed more quickly for people working in multiple states. Under current law, PAs are required to go through the individual licensing process for each state for which they are seeking licensure. The interstate compact would offer an accelerated licensing process through the FSMB. This means there would be an understanding between the states participating in the interstate compact that, if they receive an application from an individual who is licensed by another participating state, the applicant has met certain requirements (has been pre-screened); therefore, the application for licensure would be processed more quickly.

Mr. Grant stated that attendees were provided with backgrounds on multiple compacts for different medical professions and asked for their input regarding what they would like included in the pre-screening requirement. The basic list included graduating from an accredited PA program, completion of initial certification from NCCPA, must have one unencumbered license in another state, have to pass federal background checks (no prior convictions or criminal activity), no history of licensure actions, a clean DEA history, no active investigations and that the interstate compact would be an alternative pathway. An alternative pathway meaning that if, an applicant didn't meet the requirements of the interstate compact, the applicant could still apply using the state's regular application process. Areas of disagreement included whether or not maintenance of NCCPA certification would be required, as only 18 states currently require maintenance of NCCPA certification, and whether every state should complete primary source verification.

There were no real decisions made during the meeting, but the model that most people liked the best was the FSMB physical therapy interstate compact. The meeting

ended with some conversation about getting telehealth involved in this interstate compact. Telehealth is a growing field, but providers are limited as they can only provide treatment to patients if they are licensed to practice in that state. This can be a burdensome, long and expensive process for the provider. Recommendations coming out of the meeting included having more involvement of telehealth providers in order to come to a solution, further work with state licensing authorities to see what they would agree to, maybe some involvement from lawmakers, and input from CMS and Medicaid in terms of how this would work for PAs. Mr. Grant's understating is that there is not a lot of support for a national license.

Mr. Grant stated that California has 10% of the licensed PAs in the nation. He was grateful for the invitation to attend and the opportunity he was provided to get together with other licensing and regulatory bodies from other states.

Ms. Earley questioned if there is one federation for the county, or are there regions, Ms. Grant responded that states have the option to participate, be members, of the FSMB organization and then FSMB helps to set up interstate compacts which are just agreements between states. An example of the most common interstate compact is the driver's license.

Mr. Armenta questioned if the topic of unsupervised practice was discussed, Mr. Grant replied that there was minimal discussion, as the focus was on licensure.

Mr. Alexander questioned if the meeting was attended by other board members, and if so, were the board's independent, Mr. Grant responded that 40-42 states were represented by their board's attorney, PA board member, a medical board member, or the executive officer.

12. Discussion and Possible Action Regarding Outreach and Implementation of SB 697

Frequently Asked Questions Bulletin

Mr. Grant stated SB 697, signed by the Governor in October 2019, changed the PA Practice Act and raised many questions. The Frequently Asked Questions bulletin (Bulletin) is a document that Board staff and legal counsel developed to provide an overview and address questions. He asked if there were any questions regarding the Bulletin.

Ms. Schieldge stated that at the November 2019 board meeting, the Board requested that legal counsel work with staff to develop the Bulletin. The intention was to post the Bulletin to the Board's website by the end of 2019, but due to the extensive work required on the sunset review report, it didn't happen. The Bulletin contains an overview of SB 697 and questions with answers staff received regarding SB 697. Additionally, the Board requested staff to pull from the Board's website anything outdated or inconsistent with SB 697, with the view of updating the information. Ms. Caldwell stated that the links for the sample Delegation of Services Agreement (DSA), the FAQ regarding the DSA, and the law and regulations book has been removed. New links have been added to the website, California Legislative Information (PA Practice Act) and Westlaw (California Code of Regulations). She is currently working on extracting the related laws from the laws and regulations book and hopes to repost the related laws soon. After receiving approval from legal

counsel and Mr. Grant, she requested that the Bulletin be posted to the Board's website and provided the Bulletin as a response to email inquiries received regarding SB 697.

Ms. Caldwell explained that now that SB 697 is a law, the amended text, showing underlines and strike outs of the old provisions, has been removed from the California Legislative Information website. This had made it challenging to explain, or to show the significant changes to the PA Practice Act due to the implementation of SB 697. Ms. Caldwell stated that she does have a copy of the amended text, if the Board decides that they would like to post it to the Board's website. The Bulletin has been extremely helpful and is a great resource.

Ms. Schieldge stated she believes Ms. Forsyth indicated that the Bulletin is a work in progress and can be updated as additional questions from the public, or the staff, are received. Ms. Schieldge asked if the Board had any questions regarding the Bulletin.

Ms. Earley questioned if the Board is planning to offer a sample practice agreement, Ms. Schieldge responded no, and that the Board has not reviewed or endorsed any practice agreements. The statute indicates that there are five areas that every practice agreement has to include and it is more flexible than what was previously required to be included in the DSA. She believes the Board is moving away from providing a template as it is difficult because everybody's practice is different and it could be potentially problematic legally for the Board to attempt to provide one. The statute states that the Board is not required to approve the practice agreement, that there are core requirements that have to be in every practice agreement and everything else is subject to the PA and supervising physician's agreement.

Ms. Carlquist questioned what document will the PA be held accountable for if a practice has not transitioned to a practice agreement and their DSA states that they need a physician signature; Ms. Schieldge responded that they abide by the agreement in place. If a PA has a DSA, and has not transitioned to a practice agreement, the DSA is deemed to comply with the practice agreement requirements of the new law, but the PA is bound by the agreement between the PA and the physician. From a regulatory perspective, there is no problem to leave the DSA in place, it is up to the individual parties whether they want to amend the DSA or not. Mr. Grant stated, from an enforcement perspective, the PA is going to be asked for their current agreement to determine if the PA is compliant.

Mr. Alexander asked for the input of the PAs sitting on the Board regarding the relationship between the PA and the physician, as it seems that the physician has less responsibility. Mr. Grant stated that he believes there is more responsibility on the PA to ensure that what they are doing, is reflected in the practice agreement. It has always been less clear to physicians as to what the DSA, or practice agreement, is saying. Having reviewed other PA's agreements and sample agreements online, there is a disturbing lack of specificity that could leave the PA hanging in the case of a bad outcome. SB 697 puts everything at the practice level, so it's incumbent on the PA to make sure that the practice agreement covers everything they are allowed to do, including the five areas on the Bulletin. If they don't ensure the practice agreement includes everything they are allowed to do, and a problem ensues with a patient, they could be in trouble. Because the practice agreement can be signed by a physician within the organization, the PA needs to ensure that the agreement,

reflects what the PA is allowed to do and who the PA is working with within the practice. The PA needs to take responsibility for the agreement, making sure that it meets the requirements of the law because the PA will be held accountable. The previous law required the signature of all the parties operating under the agreement, but it is not required under the current law; the signature requirement can be met by a physician within the organization.

Ms. Schieldge stated that the law still requires the practice agreement to include policies and procedures to ensure adequate supervision. It is important that all agreements meet the five criteria, particularly the furnishing of drugs and devices and prescriptions, as these are the most concrete criteria in the new law. With respect to furnishing of drugs or devices, all practice agreements that authorize furnishing of a drug or device have to specify at least six different items. If a PA is authorized to furnish Schedule II drugs, then there is further specificity needed in the practice agreement addressing the diagnosis of the illness, injury, or condition for which the PA may furnish the Schedule II controlled substance.

Ms. Caldwell questioned how to advise PAs who are uncomfortable with signing a practice agreement when they feel the agreement does not include the necessary criteria, Mr. Grant responded to have the PA put their question(s) in writing, and reinforce that, at a minimum, the agreement needs to include the five criteria that gives them the authority to see patients.

M/ Jennifer Carlquist S/ Sonya Earley to:

Delegate authority to Mr. Grant to approve future amendments to the Bulletin.

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				

Motion approved.

No public comment.

a. Regulations Review Plan

Ms. Winslow stated that she completed a preliminary review of the regulations impacted by SB 697 and identified at least seven regulations that need to be amended. The identified regulations are primarily related to supervision, practice agreement, limitations and medical services performable, and reporting of supervision on a medical record. Mr. Grant stated that hospitals do require that PAs identify the physician they are working with within the patient’s medical record; if it is outside of a hospital, it would be whoever is on the practice agreement.

Ms. Schieldge advised to have Ms. Winslow work with Ms. Halbo to review and identify regulations that are inconsistent with SB 697, provide legal counsel with the

results and legal counsel will draft proposed text to hopefully be available at the April board meeting. Agenda items 14 and 18 of the current agenda allows for some implementation changes relating to verification of whether you've taken the controlled substances education course if you are prescribing Schedule II drugs, and to allow updates to the instructions for the application to make it consistent with SB 697.

Ms. Schieldge stated that she doesn't believe there is a legal basis for arguing that it is an emergency, so the regular regulation process will be followed, which can take over a year to complete.

13. Discussion and Possible Action to Initiate a Rulemaking to Amend Title 16, California Code of Regulations Section 1399.616 to include AB 241 Requirements

Ms. Winslow stated that this regulation deals with implicit bias in the curriculum and even though AB 241 specifies to conduct audits of the class curriculum for bias, she raised authority concerns in conducting these audits.

Ms. Schieldge stated that the Board does have the authority to audit under this law and existing regulations. During the November 2019 board meeting, Ms. Schieldge suggested amendments to two different regulations, one of which was Section 1399.617 Audit and Sanctions for Non-Compliance. Ms. Schieldge stated that upon review and consultation with Ms. Halbo and Mr. Maguire, legal counsel agreed that the Board didn't need to change Section 1399.617 because the statute itself is self-executing, it just says the Board has to audit by 2023. In regards to Section 1399.616, counsel recommends using existing program for approving continuing medical education (CME) programs and adding language to subdivision (a) that says "the CME program is approved, if they also meet the requirements, if the program has a direct patient care component, and the provider has curriculum that includes an understanding of implicit bias". AB 241 requires that this component is included in the curriculum and under this new law, the Board cannot allow courses to be approved for CME if it does not include that component by 2022, even though the statute states that the CME program doesn't have to fully comply until 2023. Ms. Schieldge stated the Board has to include the requirement in the regulations by 2022, but the statute precludes the Board from enforcing it against the providers until 2023; audits will not occur until that time.

M/ Jed Grant S/ Sonya Earley to:

Approve the proposed regulatory text for Section 1399.616, 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				

Motion approved.

No public comment.

14. Regulations

Discussion and Possible Action to Consider Changes to Previously Proposed Text and Reauthorization of a Regular Rulemaking to Amend Title 16, California Code of Regulations Sections 1399.514 and 1399.615 - Renewal of License and Continuing Medical Education Required

Ms. Winslow stated proposed language for Section 1399.514 was previously approved by the Board, but due to the implementation of SB 697, PAs are now required to complete a controlled substance course class, before renewing their license, if they hold a DEA license and are authorized through their practice agreement to prescribe controlled substances. The previously approved language has been updated to include this new requirement and is in the Board’s packet for review.

Additionally, proposed language for Section 1399.615 addressing the continuing medical education (CME) requirement regarding the controlled substance course, is also in the Board’s packet for review and approval.

Ms. Winslow raised the question of updating the renewal application due to the new controlled substance course requirement specified in law. Ms. Schieldge stated that because the statute is not self-executing it creates a regulatory requirement; therefore, there is a need to update and adopt a regulation before it can be implemented. Ms. Schieldge stated that for now, the Board could address this within the Board’s CME audit process, if it is investigatory.

Ms. Schieldge stated that because the Board had previously approved proposed text, staff is asking the Board to rescind the prior motion and approve the current proposed text.

M/ Sonya Earley S/ Javier Esquivel-Acosta to:

Rescind the prior motion, approve the current proposed text, 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				

Motion approved.

No public comment.

Proposed Amendments to Title 16, California Code of Regulations, Section 1399.523.5 Required Actions Against Registered Sex Offenders

Update provided in the meeting materials.

Proposed Amendments to Title 16, California Code of Regulations, Section 1399.525 Substantial Relationship Criteria

Update provided in the meeting materials.

Proposed Amendments to Title 16, California Code of Regulations, Section 1399.526 Rehabilitation Criteria for Denials and Reinstatements

Update provided in the meeting materials.

Proposed Amendments to Title 16, California Code of Regulations, Section 1399.527 Rehabilitation Criteria for Suspensions and Revocations

Update provided in the meeting materials.

Amendments to Title 16, California Code of Regulations, Section 1399.527 Audit and Sanctions for Non-Compliance was been approved, effective January 1, 2020. Ms. Winslow stated that the licensee selected to participate in the CME audit is given 65 days to comply with the requirements of the letter. Staff make three attempts to contact non-responsive licensees before the licensee is referred to cite and fine.

No public comment.

15. Education/Workforce Development Advisory Committee

Mr. Alexander stated that at this time, he had no new information to report.

16. Budget Update

Marie Reyes, DCA Budget Analyst, thanked the Board for the opportunity to provide the following report:

- Fund Condition – the Board’s fund condition is healthy. Ms. Forsyth is conservative with expenditures. For FY 2018-19, fund reserve, 15.7 months; revenue generated, \$2.1 million; authorized expenditures, \$1.52 million; actual expenses, \$1.3 million. The \$1.5 million loan repayment is scheduled to occur by the end of FY 2019-20. The Governor’s budget for FY 2020-21,

includes the additional four staff positions authorized in the Budget Change Proposal.

- Expenditure Report – the Board is expecting to revert 0.5% taking into account the inclusion of every possible expense such as rate increases, relocation expenses, MAXIMUS, and filling vacant positions.

Ms. Reyes reported that based on revenue collected to date, she is anticipating collecting \$2.4 million for FY 2019-20, not the \$2.2 million as projected.

No public comment.

17. Legislative Committee

Ms. Earley reported the following:

AB 193 – Patterson: Professions and Vocations

This bill would require the DCA to review all licensing requirements under its jurisdiction. Identify unnecessary licensing requirements and report to the legislature.

Previous Board Action: To support if amended to remove the provisions that require the DCA to review all licensing requirements and identify unnecessary licensing requirements for the board to report to the legislature.

Status: With Assembly, hearing was canceled at the request of the author.

AB 298 – Fong: California Public Records Act Ombudspersons

This bill will create the California Public Records Act Ombudspersons who would be available to the public to review denials by the state agencies of requests for public records.

Previous Board Action: None.

Status: Passed Assembly; set first hearing, but failed passage and reconsideration was granted.

AB 312 – Cooley: State Government: Administrative Regulations Review

This bill would require state agencies, including departments, boards and bureaus to complete a one-time review of their regulations and identify those that are duplicative, inconsistent and out-of-date.

Previous Board Action: None.

Status: In Committee and held under submission.

AB 358 – Low: Sexual Assault Forensic Examination Kits: Databases

This bill would require new law enforcement agencies investigating a case involving the collection of sexual assault kit evidence, to create an information profile for the kit only if one does not currently exist.

Previous Board Action: None.

Status: In Committee and held under submission.

AB 544 – Brough: Professions and Vocations: Inactive License Fees and Accrued and Unpaid Renewal Fees

This bill would limit the maximum fee for the renewal of the license in an inactive status to no more than 50% of the renewal fee for an active license.

Previous Board Action: None.

Status: In Committee and held under submission.

AB 613 – Low: Professions and Vocations: Regulatory Fees

This bill would authorize programs within the DCA 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.

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

Status: In Committee, testimony taken, hearing postponed by Committee.

AB 890 – Wood: Nurse Practitioners

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

Previous Board Action: None.

Status: In Committee, hearing postponed by Committee.

SB 53 – Wilk: Open Meetings

This bill will revise the Bagley Keene Act regarding state body created advisor 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 a larger board, committee or commission and the advisory committee is supported wholly or partially by state funds.

Previous Board Action: Opposed as the Board utilizes a two-person committee that has no decision-making ability and is required to report back to the Board.

Status: Held in Committee under submission.

SB 615 – Hueso: Public Records: Disclosure

This California Public Records Act requires the public agency, defined as a state or local agency, to make its public records available to public inspection and to make copies available upon request a payment of a fee unless the public records are exempt from disclosure.

Previous Board Action: Watch.

Status: Referred to Committee on Judiciary.

Ms. Earley thanked Ms. Valencia for her service to both the Board and the Legislative Committee. Ms. Forsyth stated that Ms. Valencia has submitted her application for reappointment through the Senate to the Board, but the Board has not received word.

Ms. Schieldge stated that due to the expiration of Ms. Valencia's term, the president has the authority to appoint a new Legislative Committee, but advised tabling the subject until it is placed on a future agenda.

18. Discussion and Possible Action Regarding Proposed Amendments to the Initial Physician Assistant License Application, Application Instructions and Applicant General Information Documents

Ms. Schieldge indicated that it was brought to her attention by staff that there are certain provisions in the instructions and general information that need to be updated in order to be compliant with SB 697. A lot of the instructions are advisory and deal with the process of filling out the application itself. Proposed language provided for the following sections of the instructions include:

- 1) "Practicing as a Physician Assistant". Includes striking the Delegation of Services Agreement (DSA) references to the law, because that has been superseded SB 697. Instead of referring to a DSA, the instructions will refer to Practice Agreement (Agreement) and the Agreement requirements as set forth in SB 697. Business and Professions Code (BPC) Section 3502 states that every Agreement must include: 1) types of medical services a physician assistant is authorized to perform, 2) policies and procedures to ensure adequate supervision of the PA, 3) the methods for continuing evaluation of the competency and qualifications of the PA, 4) the furnishing or ordering of drugs or devices by a PA pursuant to BPC section 3502.1, and 5) any additional provisions agreed to by the PA and physician and surgeon.
- 2) "Physician Assistant Laws and Regulations". Since, at this time, there is not a laws and regulations booklet, the proposed amendments to the text include the option of contacting the Board for additional resources.
- 3) "Continuing Medical Education". Includes adding the new requirement of, if a PA is authorized by the DEA registration, has an active license and is authorized to prescribe or furnish schedule to controlled substances, the PA is required to take a one-time controlled substances education course meeting the standards in the Board's regulations by the next renewal. With the addition of this text, the PA not only knows that they have to take 50

hours of CAT 1 pre-approved CMEs during the renewal period, but they have to take this class if they meet those other requirements.

- 4) Additionally, throughout the instructions, the website reference was updated from www.pac.ca.gov to www.pab.ca.gov.

M/ Sonya Earley S/ Charles Alexander to:

Approve the changes as discussed for the Application Instructions and General Information document for physician assistant license.

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				

Motion approved.

No public comment.

19. Agenda Items for the January Meeting

- 1) Discussion regarding the establishment of an Executive Committee.

Ms. Schiedge advised that if it's advisory it can be a two-person committee, but if it is more than one person making a final decision, it has to be noticed.

- 2) Results of the staff's desk audit related to increasing the initial application processing fee.
- 3) Education/Workforce Development Advisory Committee.
- 4) Sunset Review hearing update.
- 5) Potential proposed text to implement changes to regulations as a result of SB 697.
- 6) Changes to the Board meeting location and dates.
- 7) Legislative update.
- 8) Regulations update.
- 9) Standardizing school presentations.
- 10) Staff reports.
- 11) SB 697 bulletin updates.

M/ Sonya Earley S/ Javier Esquivel-Acosta 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				

Motion approved.

With no further business the meeting was adjourned 2:40 p.m.

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