

MEETING MINUTES
March 4, 2024
8:30 A.M. – 5:00 P.M.
PHYSICIAN ASSISTANT BOARD
Department of Consumer Affairs
1747 N. Market Blvd.
Ruby Room
Sacramento, CA 95834

1. Call to Order by President

President Earley called the meeting to order at 8:33 a.m.

2. Roll Call

Staff called the roll. A quorum was present.

Board Members Present:

Sonya Earley, Ed.D., PA-C, President
Vasco Deon Kidd, DMSc, PA-C, Vice President
Charles Alexander, Ph.D.
Juan Armenta, Esq.
Randy Hawkins, M.D. (via video conference)
Diego Inzunza, PA-C
Deborah Snow

Staff Present:

Julie Caldwell, Lead Licensing Analyst
Jasmine Dhillon, Legislative and Regulatory Specialist
Virginia Gerard, Probation Monitor
Christina Haydon, Discipline Analyst
Pearl Her, Enforcement and Licensing Support Technician
Michael Kanotz, Attorney III
Rozana Khan, Executive Officer
Armando Melendez, Special Investigator
Kristy Schieldge, Regulatory Counsel, Attorney IV
Kristy Voong, Assistant Executive Officer (via video conference)

3. Consider Approval of November 6, 2023, Board Meeting Minutes

M/ Juan Armenta S/ Vasco Deon Kidd to:

Approve the November 6, 2023, Meeting Minutes.

No public comment.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Sonya Earley	X				
Diego Inzunza	X				
Vasco Deon Kidd	X				

Deborah Snow	X				
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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).])

No public comment.

5. President's Report

Dr. Earley reported that she and Vice President Kidd along with Executive Officer Rozana Khan, met bi-weekly to address any information pertinent to the Board. Dr. Earley reported that Ms. Khan does an excellent job in keeping her and Dr. Kidd informed of relevant news and staff changes. Dr. Earley welcomed Kristy Schieldge, Regulatory Counsel, and acknowledged that Ms. Schieldge had previously served the Board and Dr. Earley stated she is pleased to have her joining the Board again.

Dr. Earley welcomed the new staff member, Pearl Her, and reported that Ms. Her has already proven herself capable of performing her duties to the Board members during this very meeting.

Dr. Earley recognized that the Board bid farewell to Board members Jed Grant and Jennifer Carlquist, and that the Board now has three vacancies. She encouraged listeners to consider that they, or persons whom they know of excellent caliber, could go to the Board's website and complete an application to be a Board member and join the team.

Dr. Earley reported that Jasmine Dhillon does a wonderful job with her duties, but that nevertheless, she (Dr. Earley) and Ms. Carlquist did sign off of the Legislative Committee, so if in the event Ms. Dhillon should need support because of their leaving it, to please advise her of such.

Dr. Earley further thanked the Board and staff and reported that the Board's team is an outstanding one, and in particular she recognized the Executive Officer and the legislative team. Dr. Earley thanked the entire team up front for the upcoming year and stated that she appreciates the service and efforts of all.

No public comment.

6. Executive Officer's Report

Ms. Khan referred members to Agenda Item 6 and reported the following.

A. Personnel

Effective January 30, 2024, Armando Melendez has been promoted to Special Investigator; on February 13, 2024, Administrative Analyst Ariel Gompers accepted a promotional position with the Office of Administrative Hearings; Regulatory Counsel Karen Halbo accepted a position with the California Department of

Industrial Relations; and Kristy Schieldge is stepping in as the Board's regulatory counsel.

B. Outreach

Due to the current state budget deficits in fiscal years 2023-24 and 2024-25, the Board will temporarily suspend all outreach activities until further notice. This includes non-essential travel plans both in-state and out-of-state, such as participation in seminars, conferences, and training. Only travel necessary to conduct official state business will be permitted during this period.

Dr. Hawkins asked Ms. Khan if any specific impact has been made on the Board's ability to do its job by the limitations imposed through the financial restrictions. Ms. Khan noted that one of the recent goals of the Board has been to further its outreach and this has been affected.

Public comment:

Teresa Chien, Executive Director for the California Academy of Physician Associates (CAPA) expressed that the Board will always have a complimentary exhibit table at their conferences whenever outreach is available again. Ms. Chien was thanked by Dr. Earley.

No further public comment.

7. Board Activity Reports

A. Licensing

Ms. Caldwell referred members to Agenda Item 7A and reported the following Licensing Population by Type, Summary of Licensing Activity, Pending Application Workload, and Licensing Performance Measures reports.

Dr. Kidd asked Ms. Caldwell in what way are the applicants, which are at 91 days and over, incomplete in their applications. Ms. Caldwell stated that all the applicants reflected in her report, have had their applications reviewed and are now pending action to be taken by the applicant. She provided an example, stating that some students apply expecting to pass their Physician Assistant National Certifying Examination (PANCE), and should they fail, they must wait for a certain period before retaking it. Additionally, some students apply too early before graduating and this is reflected in the additional time as well. Ms. Caldwell mentioned that the Board's website has information advising students to wait until they are within 30-45 days of graduating before applying, as applying too early could prolong the application process, increasing the risk of applications expiring. When asked by Dr. Kidd if this imposes an additional workload burden, Ms. Caldwell stated it does not.

Mr. Armenta inquired if the pie chart can be expounded further to indicate that the Board is awaiting action from the applicants. Ms. Caldwell explained that it is unlikely due to how BreEZe captures and reports the data. She confirmed that the major delays to processing the applications are due to students applying too early (months before graduation), waiting for passing test score results, and awaiting information from entities in other states. Mr. Armenta suggested including this information in the

report to address potential criticisms of the Board's efficiency in processing applications and to clarify that these delays are beyond the Licensing Unit's control. Ms. Caldwell agreed with Mr. Armenta's suggestion.

Dr. Hawkins asserted that there is a healthcare workforce shortage and asked how physician assistants (PA) are contributing to ease the healthcare workforce shortage in California. Ms. Caldwell recalled information from the Education/Workforce Development Advisory Committee indicating that students obtaining their education in California tended to stay and work here. Although the Board does not collect this information from applicants, she noted this trend from the committee's findings. Dr. Kidd confirmed this evidence, stating that the majority of PAs educated in California remain in the state.

B. Complaints

Mr. Melendez referred members to Agenda Item 7B and reported the following: Complaint Statistics and Complaints Received by Type and Source reports.

Mr. Melendez was congratulated by Board members and President Earley stated she was glad to have Mr. Melendez continue his service with the Board.

Mr. Armenta asked to confirm his interpretation of the data that the Board was slowly improving its investigation aging. Mr. Melendez confirmed that was correct.

C. Discipline

Ms. Haydon referred members to Agenda Item 7C and reported the following Discipline Statistics Report.

Dr. Hawkins asked about cases in the over 300 days category and queried whether the length in days was due to case complexity or other reasons in general. Ms. Haydon explained that the legal process is the reason, as the normal processes of discovery and setting up a hearing take months. She mentioned that all parties involved need to agree to a hearing date, which typically takes months to coordinate. Mr. Armenta concurred, stating that due process accounts for the extended timeline, and noted that the current numbers of 300 days were typical and lower than they had been a few years ago, when seeing 500 days was not uncommon.

D. Probation

Ms. Gerard referred members to Agenda Item 7D and reported the following Probation Activity Report.

Mr. Armenta inquired if the probationers are professional and respectful towards her. Ms. Gerard reported she has been received as such.

Dr. Earley asked if the numbers of probationers was decreasing. Ms. Gerard explained while the number fluctuates, it is currently decreasing. However, she noted that the average number over time has been relatively the same.

E. Diversion

Ms. Gerard referred members to Agenda Item 7E and reported the Diversion Program Activity Report.

No public comment.

8. Department of Consumer Affairs – Director’s Update (DCA Staff) – May Include Updates Pertaining to the Department’s Administrative Services, Human Resources, Enforcement, Information Technology, Communications and Outreach, as well as Legislative, Regulatory and Policy Matters

Judie Bucciarelli, Staff Services Manager Specialist from DCA’s Board and Bureau Relations, thanked the Board for its service to consumers. Ms. Bucciarelli stated that last month, the Business, Consumer Services and Housing Agency welcomed Secretary Tomiquia Moss.

Ms. Bucciarelli reminded the Board of the Department of Finance’s Budget Letter that directed all State agencies under the Governor to take immediate action to reduce current year expenditures, with certain exceptions for time-sensitive, emergency-related, mission-critical, or information security (IT) needs. She also reported that DCA thanks the Board for doing its part to reduce expenses and find cost savings as part of the collective state agency effort.

Ms. Bucciarelli reported that the Diversity, Equity, and Inclusion (DEI) Steering Committee will hold its next meeting on April 5, 2024, when it will elect a new chairperson. She reminded the Board that SOLID offers DEI training opportunities online through Learning Management System (LMS).

Ms. Bucciarelli reported that DCA Director Kimberly Kirchmeyer (Director) testified last month at an informational legislative hearing related to interstate licensure compacts as she had been invited by the Senate Committee on Business, Professions, and Economic Development (Committee). The Director discussed the impact of licensing compacts on consumer protection, licensees, boards and bureaus, as well as the Legislature. The Director answered questions from the Committee and provided examples. DCA will continue to work with the Legislature.

Ms. Bucciarelli reported that effective March 1, 2024, in collaboration with the DCA Executive Leadership Team and the Executive Officer/Bureau Chief Cabinet, the Division of Investigation (DOI) updated the Complaint Prioritization and Referral Guidelines for Healing Arts Boards which should be used when determining which complaints to refer to the DOI and what can remain with each respective program. Of note, referral guidelines for the professions and vocations boards/bureaus are in progress and will be completed soon.

Ms. Bucciarelli also reminded the members of the Board to file their Annual Form 700 by March 15, 2024. She further reported that the next Board Member Orientation Training is March 27, 2024, and is available on LMS. Ms. Bucciarelli thanked the Board for the opportunity to join the meeting today.

No public comment.

9. Budget Update

Budget Analyst Andrew Trute referred members to Agenda Item 9 and reported the following fund condition and expenditure reports.

Mr. Trute reported in FY 2023-24, the Board has a budget of about \$3.2 million. The Board is projected to use 41.67% of its expenditure on Personal Services which includes salaries and benefits; 25.39% for Operating Expenses & Equipment which includes contracts, purchases, and travel; and 37.26% for Enforcement which is for the Office of Administration Hearings (OAH) and the Attorney General (AG). The Board is estimated to have -4.32% in Reversion.

For the Board's fund condition, Mr. Trute stated for FY 2022-23 actuals, the Board has a beginning balance of \$4.5 million with prior year adjustment of \$51,000, giving the Board an adjusted beginning balance of \$4.6 million. The Board has an overall revenue of \$2.8 million, and total expenditure of \$3.1 million, which gives a fund balance of 4.2 million (15.0 months in reserve).

Mr. Trute stated for current year 2023-24, the Board has a beginning balance of \$4.2 million, estimated revenue of \$2.9 million, estimated expenditure of \$3.4 million, giving a fund balance of \$3.8 million (13.2 months in reserve). There are no immediate concerns for this fund.

Budget Manager Suzanne Balkis informed the Board, of a deficit of \$137,000. However, she assured them that the Budget Office, the Department of Finance, and Ms. Khan are working to get an AG augmentation for the Board for this year, which will cover that deficit.

Mr. Armenta inquired whether receiving the AG augmentation for this year, would reverse the trend of seeing a decline in months in reserve. Ms. Balkis explained that the Budget Office always tries to over project in case of unexpected expenses. As they gather more reports and expenditures overtime, they can better project future finances. However, for now, the current projection remains as reported.

No public comment.

10. Report on Medical Board of California Activities

Dr. Hawkins, President of the Medical Board of California (MBC) reported the MBC last met February 29-March 1, 2024, in Los Angeles. He reported that highlights of the meeting included a presentation by Alice Quo, M.D., Ph.D. titled, "Rethinking Autism: Identity, not Disease." Dr. Hawkins found it to be informative and he recommended it to all. Another highlight of the meeting was the "Discussion on the Final Report of the Enforcement Monitor." He said that MBC will be doing a deep dive to determine which recommendations can be implemented.

Dr. Hawkins reported the MBC had two member resignations, and two new appointees. He reported the MBC is still deficient in members, specifically on the non-physician member side.

Dr. Hawkins reported attending the Federation of State Medical Boards (FSMB) one-day symposium in January titled, "Artificial Intelligence and Healthcare." He mentioned that the MBC will soon have a presenter on that subject and will inform the Board when it occurs.

Dr. Hawkins also announced his plan to appoint two MBC Board members to a task force aimed at addressing issues regarding the mental health questionnaire portion of the application and reinstatement. Additionally, he will appoint a committee to investigate racial disparities in maternal mortality, citing a presentation given on the matter at their August 2023 meeting.

Lastly, due to MBC being able to secure the license fee increase, Dr. Hawkins outlined the following MBC priorities: implement an online complaint tracking system, establishing a complainant liaison unit, and conducting complaint/representative interviews before closing a quality-of-care case.

Dr. Earley inquired about pushback issues related to their fee increase. Dr. Hawkins explained that although certain medical professional groups were against the request, MBC's inability to function without the fee increase led to its approval. He emphasized that MBC had not had a substantial fee increase in 15 years and needed it to fulfill its public protection duties.

Dr. Alexander asked about the prioritization of new complaint staffing, wondering if it was due to an increase in complaints. Dr. Hawkins acknowledged that MBC receives large numbers of complaints but clarified that the goal of the new priorities is to improve responsiveness to the public and enhance transparency in the complaint process.

Mr. Armenta pointed out that Dr. Hawkins as President of the MBC, undoubtedly assisted in getting these priorities addressed. Dr. Hawkins thanked Mr. Armenta and attributed the achievement to teamwork and acknowledged the efforts of past Board President, Christina Lawson, and a great MBC staff. Dr. Hawkins added that the new system would primarily show processing information and that access to this information would be limited to specific individuals. Dr. Hawkins also stressed the importance of legislature support for effective Board operations.

Mr. Armenta and Dr. Earley agreed that if the MBC successfully implements the system, that the Board should consider a similar approach.

No public comment.

11. Discussion and Possible 2024 Board Meeting Dates

Dr. Earley indicated that since the February board meeting was rescheduled to March, the Board need to consider other dates and make sure each meeting is within its 100-day limit. Dr. Earley proposed changing the meeting from April 29, 2024, to May 20, 2024, and stated that meeting would be held in Sacramento.

The next proposed date was changing the meeting date from August 5, 2024, to August 9, 2024. This meeting would be held in Southern California. The next proposed meeting date was November 8, 2024.

Mr. Kanotz reminded the members of the current traditional single-location option, the traditional teleconference option, and the new teleconference option available under the Bagley-Keene Open Meetings Act.

Dr. Earley reiterated the importance of providing the earliest notification possible if one cannot make the meeting, so the appropriate adjustments can be made.

M/ Juan Armenta S/ Vasco Deon Kidd to:

Approve the proposed 2024 meeting dates of May 20, 2024, August 9, 2024, and November 8, 2024.

No public comment.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Sonya Earley	X				
Diego Inzunza	X				
Vasco Deon Kidd	X				
Deborah Snow	X				

12. Update, Discussion, and Possible Action on Proposal to Amend 16 CCR Sections 1399.502, 1399.540, 1399.541, and 1399.545 – SB 697 Implementation, Proposed Modified Text and Consideration of Public Comments

Ms. Schieldge, Regulations Counsel, stated in April 2019 she provided the Board with a detailed analysis regarding the effects of the enactment of Senate Bill (SB) 697. They discussed the fact that the legislation if enacted could supersede any regulations that require “personal presence”, prescribe the qualifications for a PA to perform specified medical services, or how medical services must be provided pursuant to a practice agreement (formerly known as a delegation of services agreement) since Business and Professions Code (BPC) sections 3501, 3502, and 3502.3 as proposed to be amended by that bill would set those requirements in law. In addition, SB 697 struck the Board’s previous rulemaking authority at BPC 3502 to establish “alternative mechanisms” for the adequate supervision of PA by regulation. This was section 3 of the bill, BPC 3502(c)(3). Ms. Schieldge recently reviewed the law in these areas and her opinion regarding the legal effect on the Board’s regulatory authority remains the same. Under the Administrative Procedure Act, which is the law that governs the adoption of regulations by state agencies, at Government Code Section 11342.2, no regulations are valid unless authorized and not inconsistent with the Board’s enabling laws, which in this case is the Physician Assistant Practice Act (Act). As a result, it is her opinion that any regulatory proposal that retains the requirement that the supervising physician be physically present, have a “personal presence,” be available “in person,” or be “immediately available to attend to a patient” would likely not be successful when presented to the Office of Administrative of Law (OAL). Ms. Schieldge and staff recommend that the Board accept all of CAPA’s comments on the last modified text proposal and revise the proposed regulatory language as set forth in the Second Modified Text which is provided in Attachment 1. If the Board agrees with the proposed responses set forth in the meeting materials and text as proposed in Attachment 1, Ms. Schieldge and staff are requesting that the Board pass the motion set forth in Option A on page eight of the memo.

Mr. Armenta asked Ms. Schieldge whether, in her opinion, these changes affect the substance of what the Board is trying to accomplish. Ms. Schieldge responded that significant change lies in the attempt to retain some elements of personal presence, as outlined in the prior text in Attachment 2. For example, the proposal in Attachment 1 would strike any reference to the requirements for the physician to be personally present or required to be immediately available to attend to the patient.

Ms. Schieldge explained that her overall recommendation in 2019 was for the Board to oppose the legislation if it had concerns about retaining its regulatory authority to set minimum standards for supervision. However, after working out agreements with the sponsor and author, the Board ended up supporting the legislation, which was subsequently signed into law by the Governor in September 2019. She noted that by removing regulatory authority to set the supervision standards, which are determined through the practice agreement, would require a legislative change from the Board. Ms. Schieldge mentioned that CAPA has raised arguments that the Board does not have the authority to prescribe how surgical procedures are supervised by a supervising physician with respect to PAs. It appeared to Ms. Schieldge that the Board attempted to retain some of that authority in the last modified text notice, and Ms. Schieldge would suggest striking that language. The biggest contentious issue is 16 CCR 1399.541 where the Board previously tried to include text stating “the physician assistant may so act without the personal presence of the supervising physician if the supervising physician is immediately available to the physician assistant” and text defining “immediately available.” The definition as proposed in the modified text notice includes: “Immediately available” when used in this section means a supervising physician is physically accessible and able to attend to the patient, without any delay, to address any situation requiring a supervising physician’s services.” Ms. Schieldge and staff recommend removing these provisions because the law sets the standards for how supervision occurs by a supervising physician.

Mr. Armenta disagreed with this recommendation because he stated that the Board presume the Legislature knew what it meant when it used personal presence as a precise definition. Ms. Schieldge advised that the Legislature specified physical presence, and that BPC 3501(f)(1) states that supervision shall not be construed to require the physical presence of the physician and surgeon.

Mr. Armenta responded by stating that physical presence has a certain definition and that does not affect the practice agreement requirements, including that the physician can be in the room. Ms. Schieldge advised that physical presence means personally available to attend, which means the physician can generally be in the building for example. Mr. Armenta disagrees with that interpretation, and stated the problem with that is if there is an emergency, the physician is to be available nearby, not somewhere on a large campus.

Ms. Schieldge advised that she understands the public policy issues raised, but that amendments enacted by SB 697 at BPC 3501(f)(1)(A) amended the Act so that it now states, “[a]dherence to adequate supervision as agreed to in the practice agreement”, so adequate supervision is decided in the practice agreement, not by Board regulation. The legislative history supporting the bill was to remove the Board’s authority to set those standards by regulation, so Ms. Schieldge advised that the Board will have a difficult time retaining the “immediately available” definition in text. BPC 3501 sets the minimum standard on how supervision is determined by the

practice agreement, and BPC 3502(a) supports that by stating “[n]otwithstanding any other law, a PA may perform medical services as authorized by this chapter if the following requirements are met:

- (1) The PA renders the services under the supervision of a licensed physician and surgeon...
- (2) The PA renders the services pursuant to a practice agreement that meets the requirements of Section 3502.3.
- (3) The PA is competent to perform the services.
- (4) The PA’s education, training, and experience have prepared the PA to render the services.”

Ms. Schieldge advised that she believes that BPC 3502.3 specifies the requirements for a practice agreement and, also states “nothing in this section shall be construed to require approval of a practice agreement by the board,” so the Board does not have the authority to review practice agreements or set the contents of the agreement.

Mr. Armenta stated his interpretation of that provision is that the Board cannot review individual practice agreements, not that the full autonomy to decide adequate supervision is given to the practitioners when it comes to practice agreements. Mr. Armenta stated the question is what did the Legislature mean when they defined physical presence in BPC 3501(f)(1)? He stated that his interpretation is prohibiting the requirement that the physician be “in the room” in this context.

Ms. Schieldge stated that she does not understand how the definition the Board proposed for “immediately available” in the prior modified text (Attachment 2) is any different than requiring someone to be physically present in the room. Mr. Armenta said the proposed regulation defining “immediately available” does not require the physical presence of the physician, but they could be called on the phone to attend to the patient.

Ms. Schieldge advised that when the physician is called to come to “attend to the patient” they are actually being required to be physically present because they have to be physically present in order to immediately “attend” to the patient (i.e., return to the “room” where the patient is). As a result, it could be argued that the “physically accessible and able to attend to the patient” requirement is a physical presence requirement, which is prohibited from being required by the Board per BPC 3501(f)(1). Mr. Armenta stated he understood that point, but this change in policy direction raises public protection concerns for him, and he does not see the clarity of that point reflected in the Board’s statutes.

Dr. Kidd agreed that the focus of the practice agreement is on determining supervision at the practice level between the physician and PA, rather than being prescribed by the Board. For example, if a PA administers anesthesia and performs procedures, such actions must be approved by the credentialing and privileging body of a health system or a hospital, which typically does not permit such practices. He noted that a physician supervising a PA, there are rules and administrative policies around that, and even with a practice agreement, there are still delineations of privilege agreements, administrative policies, bylaws, and regulations that PAs and physicians must adhere to. Dr. Kidd concurred with CAPA’s comment and interpretation that the Board cannot require the physical presence of a physician. He

elaborated that general supervision typically means electronically available, direct supervision means to be generally somewhere on-site, and personal supervision is to be immediately available in the room as something is being done.

Mr. Armenta disagreed with that interpretation and asked why the Legislature did not specifically state in the statute that it was authorizing the professions to have complete autonomy to set supervision standards if that was the intent.

Ms. Schieldge advised that she believed the statutes and bill analysis support this interpretation. She noted that the statutes specify that PAs may perform the services if they meet the requirements of BPC 3502.3. Therefore, she is having trouble understanding how the Board has any authority to say otherwise. This change in the law does not prevent the Board from disciplining if a PA falls below the standard of care, or taking any enforcement action, but it does prevent the Board from setting minimum standards before something occurs.

Mr. Armenta responded by stating that BPC 3502.3(b) gives the Board authority to set regulations when it states, “[n]otwithstanding any other law, in addition to any other practices that meet the general criteria set forth in this chapter or regulations adopted by the board...”

Dr. Kidd stated coming up with minimum standards is best determined at the practice level. The Board is not an expert on all the areas a PA would practice, and the expertise lies in the practice based on factors that hospital systems, doctor’s offices, and clinics look at to determine competency required to perform the tasks and activities. The physician and PAs are experts in the field, and they know what competency is required for what they do in that clinical space. Dr. Kidd does not believe that the Board should prescribe those supervision standards, and that is intent of SB 697 so that the PA and physician are determining the level of supervision.

Ms. Schieldge reviewed BPC 3502.3(b) and advised that she believes that section has to do with authorizing the Board to provide exemplars of the types of services that may be authorized. She directed the Board to 16 CCR 1399.541, which is the existing regulation interpreting the Board’s regulatory authority referred to in BPC 3502.3. She advised that 16 CCR 1399.541 provides a list of examples for the types of services performable (a “blueprint” for what a physician can put in a practice agreement) and was not adopted by the Board to set the standards for how physicians and PAs determine the content of the practice agreement and supervision.

Mr. Armenta stated he interprets BPC 3502.3(b) to mean notwithstanding the Board’s regulations, the practice agreement can still include the services listed in BPC 3502.3(b)(1) – (3), but regulations can be adopted if they don’t affect BPC 3502.3(b)(1) – (3).

Ms. Schieldge advised that the purpose of this section is for those unfamiliar with practice agreements to show what services can be included in the practice agreement. Ms. Schieldge advised that this language was in effect prior to SB 697 and the Board, by regulation at 16 CCR 1399.541, has interpreted it that way. In her opinion, BPC 3502.3 does not allow the Board to limit or prohibit the services that are performable but instead authorizes the Board to promulgate regulations to

specify “other practices” “in addition” to those authorized by the Act that may be included in a practice agreement, but those “other practices” set by regulation cannot conflict with the Act by law. Otherwise, she was unclear why the Legislature would make a point of adopting the new qualifying criteria for practice agreements as authorized by SB 697 in BPC 3502(a), where it states “Notwithstanding any other law” the PA may perform the services if the listed criteria are met.

Mr. Armenta stated that he would agree with Ms. Schieldge if that sentence in BPC 3502.3(b) was not retained. Mr. Armenta also stated the Board had significant negotiations with stakeholders to get to this point in the rulemaking process and now they want to claw back those agreements, which he finds troubling.

Dr. Kidd stated Mr. Armenta’s point is focusing on supervision; whereas he thinks that the intent of SB 697 was to put it in the hands of the physician and PA at the practice level. Dr. Kidd noted that nurse practitioners have similar “blueprint” laws and so he agrees that the BPC 3502.3(b) has authorized the Board to provide practitioners with a blueprint for how to construct a practice agreement.

Mr. Armenta stated that he is still opposed to changing the “immediately available” component of the regulations.

Dr. Kidd thanked Ms. Schieldge for her work on this item and announced that he would be making a motion in support of the proposed changes.

M/ Vasco Deon Kidd S/ Sonya Earley to:

Adopt the proposed responses to comments and the Second Modified Text and direct staff to send the Second Modified Text in Attachment 1 out for a 15-day public comment period. If no adverse public comments are received on the Second Modified Text, instruct the Executive Officer to take all steps necessary to complete the rulemaking process, authorize the Executive Officer to make any technical or non-substantive changes to the rulemaking package and adopt the amendments to 16 CCR sections 1399.502, 1399.540, 1399.541, and 1399.545, as noticed in the Second Modified Text.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta		X			
Sonya Earley	X				
Diego Inzunza	X				
Vasco Deon Kidd	X				
Deborah Snow	X				

Mr. Inzunza wondered if 16 CCR 1399.541 could be interpreted as an exhaustive list where it states “In any setting, including for example, any licensed health facility, out-patient settings, patients’ residences, residential facilities, and hospices, as applicable, a physician assistant may, pursuant to a delegation and protocols where present...” Ms. Schieldge responded that the words “In any setting, including for example” do not add a limitation to the statement because it provides an example of settings only. Dr. Kidd stated that by stating “any setting” it allows for any setting to be included in this section. Mr. Armenta agreed that this section does not exclude

any setting from being included because the words “any setting” are included in the text.

Public comment:

Brett Bergman, past president of CAPA, speaking on behalf of CAPA, expresses CAPA’s support for Option A. In regard to Mr. Armenta’s concern of the PA performing surgery independently on a patient under anesthesia, he wanted to highlight the legislative provisions restricting what a practice agreement can authorize a PA to perform found in BPC 3502(a)(3) and (4) is that the PA has to be competent to perform the services, and that the PA’s education, training, and experience has prepared the PA to render those services. If the PA is not competent or does not have the education, training or experience they cannot render the service. The practice agreement cannot authorize the PA to perform a service that they are not competent to perform. He agrees with Dr. Kidd’s assessment that hospitals and surgical facilities are accredited by numerous governing bodies and national and state agencies. The process of privileging is how a facility indicates what services a PA can perform in the surgical setting. That is also aligned with BPC 3502 in that privileges are granted based on competencies. So, if not competent, they would not be authorized to do so. A PA would not have privileges to autonomously perform a heart transplant surgery independently as they are not trained to do so. Nor would an orthopedic surgeon who has a plenary license under California law, is not restricted by the nature of their medical license rather based on the standard of care and the hospital in granting those privileges. BPC 3502(f) states the PA shall be supervised by a physician and surgeon with privileges, again highlighting the aspect of the importance of privileges. He noted that Board Regulations Counsel mentioned the remedy within the Board’s authority is discipline of the PA whose conduct falls outside of the standard of care and outside of the language found in BPC 3502.

Mr. Armenta asked what the next steps would be for completing this rulemaking. Ms. Schieldge outlined the Board’s options for completing the rulemaking. She explained that the Board has until July 26, 2024, to complete the rulemaking and the Board may have to schedule another meeting if adverse comments are received from the public or if OAL has issues with the Board’s proposed changes to existing text to try to complete the rulemaking within this timeframe.

13. Regulations – Update on Pending Regulatory Packages

Ms. Dhillon referred members to Agenda Item 13 for the detailed updates on the following packages.

1. 16 CCR 1399.514, 1399.615 – SB 697: License Renewal and Continuing Medical Education Required

Staff is currently working on initial documents with regulations counsel and the Budget Office to submit for initial review.

2. 16 CCR 1399.502, 1399.540, 1399.541, 1399.545 – SB 697: SB 697 Implementation

The Board needs to adopt the revised regulatory language in response to the comments received.

3. 16 CCR 1399.506, 1399.507, 1399.511, 1399.546 – SB 697: Application, Exam Scores, Addresses, & Recordkeeping

Staff is working on initial documents to submit for initial review.

4. 16 CCR 1399.515 – AB 2461: Retired Status to Include Fingerprint Requirement

Staff will begin working on initial documents to submit for initial review this calendar year.

5. 16 CCR 1399.523 – SB 1441: Implement Uniform Standards Related to Substance Abusing Licensees and Update of Disciplinary Guidelines

Staff will work on the proposed language in the next few months for Board approval.

Ms. Schieldge asked if it has been decided which package is priority. Ms. Dhillon responded it was decided the Application, Exam Scores, Addresses & Recordkeeping package is priority.

No public comment.

14. Education/Workforce Development Advisory Committee: Update on Physician Assistant Education Programs and Applicants in California

Dr. Kidd referred members to Agenda Item 14 for the detailed Education and Workforce Sub-Committee Report. He reported that the Committee was unable to confirm if the two developing programs mentioned in the report were still pursuing accreditation at this time. The average number of students per cohort in California is 50, slightly higher than the national average of 45 students per cohort. Notably, California State University Monterey Bay (CSUMB) will close its program in 2024 and has voluntarily withdrawn its accreditation. The 2024 class will be able to graduate; however, CSUMB is trying to find accredited programs to which they can transfer their 2,025 students. There is no guarantee these students will be absorbed by another program. With the closure of the CSUMB program, there will be about 133 less graduates per year. CSUMB began with a provisional accreditation in 2019.

Dr. Earley stated that it will be difficult for that 2,025 CSUMB class who must be absorbed into other programs unless there are already open spots.

Dr. Hawkins recalled that a similar program had trouble sending their class to other programs and asked if anyone had an update regarding this. Dr. Kidd confirmed the issue and mentioned that Western University of Health Sciences reached out to other programs in a similar manner as CSUMB is doing.

Dr. Hawkins asked if there is an issue that the Board needs to be aware of as to why these programs are having difficulties. Dr. Kidd explained that these programs are failing to meet accreditation standards. The status of each program's compliance with the standards is public information and is listed on their webpage. When a

program fails to meet the standards, they are either placed on probation or voluntarily withdraw their accreditation.

Dr. Hawkins asked if the two applying programs were aware of the issues faced by the other two programs and if they are taking steps to avoid similar issues. Dr. Kidd expressed that he believes they are aware and are working with the accreditor to understand and meet the high standards required for program accreditation.

No public comment.

15. Report by the Legislative Committee; Legislative Update

Ms. Dhillon referred members to Agenda Item 15 for the detailed report on the following bills.

A. AB 2194 (Patterson) Physician assistants: supervision: podiatrists

Staff may need to implement regulations in accordance with this bill. The Board would need to update forms and information included on the Board's website for licensees to reflect the new supervision requirements. This is something that can be done by staff and is supported by the Board's current pro rata costs to DCA.

Dr. Kidd stated that he opposes this bill as the mechanism for supervision already exists to assist podiatric providers and there are no accredited training programs for PAs in podiatry, nor standards.

Dr. Earley agreed and confirmed there are no clinical rotations in podiatry.

Mr. Armenta stated he was also troubled by this bill as it removes [Business and Professions Code section] 3502(b) completely.

Dr. Alexander questioned where this bill came from.

Mr. Kanotz advised that this bill was just filed, and no analysis has been completed on it.

M/ Vasco Deon Kidd S/ Juan Armenta to:

Oppose this bill.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Sonya Earley	X				
Diego Inzunza	X				
Vasco Deon Kidd	X				
Deborah Snow	X				

No public comment.

B. AB 2442 (Zbur) Healing arts: expedited licensure process: gender-affirming health care and gender-affirming mental health care

This bill would require staff to update the Board's licensing process to ensure applicants who meet the gender-affirming health care and gender-affirming mental health care criteria can get their license application expedited. This would require the license application form to be updated for applicants to demonstrate their intent. Staff projects there will not be an increase in licensing workload related to the new provisions of this bill.

Dr. Kidd stated that this is not needed as there is no bottleneck for PA applicants and there are no throughput issues in terms of processing application, therefore do not see that this bill is warranted.

Ms. Dhillon recalled a similar bill was filed last year that did not pass.

Mr. Armenta suggested the Board take a watch position at this time until they learn further. Dr. Earley agreed.

C. SB 1041 (Portantino) Physician assistants: licensure: Armenian Doctor Pilot Program

This bill would require staff to update the Board's licensing process to ensure applicants who meet the pilot program requirements are licensed. This would require the license application form to be updated for applicants to apply for the pilot program. Staff projects there will not be an increase in licensing workload related to the new provisions of this bill.

Mr. Armenta stated that he opposes this bill. He further stated that the imposing of additional licensing requirements, and the development of a program, should not be placed on the Board, and even if it were, it should not be done for just one university.

Dr. Earley stated that she is opposed to this bill. She stated that there is a path for international doctors to become doctors in the United States. She questions why doctors elsewhere would be vetted to a be PA here. Being a PA is not a secondary fall back onto profession should one be unable to pass the requirements for being a doctor. She cited the accrediting body stating that there are no additional pathways to becoming a PA outside the standards and this would not follow those many standards. Passing this would put the Board outside its mission of protecting the public by regulating the standards of practice.

Dr. Kidd stated that these individuals would not be eligible to take the PANCE and they would not be able to complete the rotations at federally qualified healthcare centers. These persons would then be competing for clinical rotations and displacing PA students already in their rotations and complying with standards. For these reasons and the reasons already stated, he opposes this bill.

Dr. Hawkins stated he agrees with the Board members on this bill.

Mr. Kanotz stated that the Legal Division does not take positions on the legality of bills; however, he wanted to say that this bill creates an issue about whether it is unconstitutional based on national origin discrimination. Mr. Armenta supplied that would be based on the "equal protection" clause. Mr. Kanotz confirmed.

Dr. Alexander queried if this bill came about because there was a lack of Armenian PAs in this particular community, as he recalled years ago that because of the lack of dental providers in the central valley, the Dental Board of California allowed dentists licensed in Mexico to fill in the void.

Dr. Earley ventured to posit that this is not the case here. She found in her experience Armenians seem well represented in PA programs. She maintained that it is a medical doctor issue, in that these individuals are not seeking to pass the exams mandated in this country to become a doctor, and are seeking to practice medicine in some capacity, and are therefore seeking to be a PA through other means, and as a safety net, "second place" license as it were. She feels that if the individuals could pass the exams to be a doctor in this country, the Board would not be looking at this bill.

Dr. Hawkins also recalled the MBC's Mexico pilot program was successful and provided for individuals who met the standard required in California and were providing services to underserved parts of Spanish-speaking communities. Dr. Hawkins stated that is very much different from what this bill proposes. Also, he noted that the Mexican government opposed that pilot program because they were losing practitioners.

Dr. Alexander brought up that the MBC involved in the Mexico pilot program went to Mexico to visit their educational programs to determine their standards to allow this pilot program to take place. Dr. Hawkins confirmed this. Dr. Alexander stated this bill does not allow for this visit to determine if the university in this bill is up to standards here.

Dr. Earley stated the significant difference between the Mexico pilot program and this bill proposal was that the Mexico program was MD to MD (and DDS to DDS), not MD to PA: a different license.

M/ Juan Armenta S/ Deborah Snow to:

Oppose this bill.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Sonya Earley	X				
Diego Inzunza	X				
Vasco Deon Kidd	X				
Deborah Snow	X				

No public comment.

D. SB 1067 (Smallwood-Cuevas) Healing arts: expedited licensure process: medically underserved area or population

This bill would require staff to update the Board's licensing process to ensure applicants who meet the medically underserved area or serving a medically underserved population criteria can get their license application expedited. This

would require the license application form to be updated for applicants to demonstrate their intent. Staff projects there will not be an increase in licensing workload related to the new provisions of this bill.

Dr. Kidd stated this bill brings up the same issues that were present in AB 2442, and that the Board should take the same watch position.

No public comment.

16. Agenda Items for Next Meeting

1) Include specific data for the Board activity reports (Licensing Report).

No public comment.

17. CLOSED SESSION

None this meeting.

18. Adjournment

With no further business the meeting was adjourned at 11:39 p.m.

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