PUBLIC SESSION MINUTES

Thursday, March 9, 2023
PUBLIC WEBEX MEETING

Members Present:	Ricardo Guzman, President
	Mark Goldstein, Vice President
	Raymond Hernandez, RCP
	Sam Kbushyan
	Preeti Mehta, M.D.
	Michael Terry, RCP
	Cheryl Williams
Staff Present:	Reza Pejuhesh, Legal Counsel
	Stephanie Nunez, Executive Officer
	Christine Molina, Assistant Executive Officer
	Kathryn Pitt, Associate Governmental Program Analyst

CALL TO ORDER

The Public Session was called to order at 9:30 p.m. by President Guzman.

Ms. Pitt called roll (present: Early, Goldstein, Guzman, Hernandez, Kbushyan, Lewis, Terry), and a quorum was established.

1. PRESIDENT'S OPENING REMARKS

President Guzman asked everyone to please silence their cell phones. He added, this is an official business meeting of the Respiratory Care Board. You may notice Board members accessing their laptops, phones, or other devices during the meeting. They are using the devices solely to access the Board meeting materials that are in electronic format. Public comment will be allowed on each agenda item, as each item is taken up by the Board, during the meeting. Under the Open Meetings Act, the Board may not take any action on items raised by public comment that are not on the agenda, other than to decide whether to schedule that item for a future meeting. If you would like to provide comment, it would be appreciated, though not required, if you would provide your name and the organization you represent if applicable, prior to speaking. To allow the Board sufficient time to conduct its scheduled business, public comment may be limited.

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The Board welcomes public comment on any item on the agenda and it is the Board's intent to ask for public comment prior to the Board taking action on any agenda item. If for some reason I forget to ask for public comment on an agenda item and you wish to speak on that item, please raise your hand and you will be recognized.

Request for public comment: No public comment was received.

2. APPROVAL OF OCTOBER 28, 2022, MEETING MINUTES

President Guzman asked if there were any additions or corrections to the October 28, 2022, minutes.

Mr. Kbushyan moved to approve the October 28, 2022, Public Session Minutes as written. The motion was seconded by Mr. Terry.

Request for public comment: No public comments were received.

M/Kbushyan /S/Terry
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

3. STRATEGIC PLAN APPROVAL

President Guzman presented the final version of the Respiratory Care Board's 2023-2027 Strategic Plan for the Board's final approval stating this document will be the RCB's guide over the next four years to meet the Board's mission to, "protect and serve consumers by licensing qualified respiratory care practitioners, enforcing the provisions of the Respiratory Care Practice Act, expanding the availability of respiratory care services, increasing public awareness of the profession, and supporting the development and education of respiratory care practitioners." He added, the Board's highest priority is protection of the public. The Board will continue to strive to attain meaningful improvements in respiratory care programs and the respiratory care profession in line with this priority.

Mr. Hernandez moved to approve the 2023 – 2027 Strategic Plan.

The motion was seconded by Mr. Kbushyan.

Request for Public Comment: No public comment was received.

M/Hernandez /S/Kbushyan
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

4. PROFESSIONAL QUALIFICATIONS COMMITTEE UPDATE

Mr. Hernandez explained he and Mr. Terry have been working for nearly the past 2 years toward the strategic goal of determining the need for incorporating a baccalaureate degree into the licensing qualifications. Thus far, the Committee has presented information to the Board on where the profession has been, current conversations across the nation in terms of the profession and its progression, and where the profession might need to go. In response to these presentations, a recommendation was made and supported for the next steps to include focus group sessions with experts in certain disciplines. Mr. Hernandez added, the new strategic plan (just approved) has

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included an element to continue moving forward with this goal. Specifically, Licensing Goal 2.3 which states, “2.3: Evaluate current respiratory care educational requirements and revise as necessary to support practice standards and patient safety.”

The Committee has identified 4 expert focus groups representing: (1) Advanced Care/Specialty Practice, (2) Employers, (3) Educators and (4) Regulatory/Professional Organizations. The Committee has identified representation in all these areas and will conduct focus group sessions during the last 2 weeks in March. Each focus group is scheduled to take about 1 to 1 ½ hours and has approximately 4 to 6 people representing a wide range of voices.

Mr. Terry stated focus group sessions have been scheduled and participants have been contacted. Each will be sent a packet which describes the goals of the Respiratory Care Board and how the Committee’s charge will be enacted. The Committee will have a series of open-ended questions to gather opinions on how to potentially structure a baccalaureate degree into the Respiratory Care Practice Act.

Mr. Hernandez added the Committee plans to finish the focus groups by the end of March, will take April and May to compile the information, and will then present a report to the Board at the next meeting in June.

Public Comments:

Denise Tugade spoke on behalf of SEIU United Healthcare Workers, who represents allied healthcare workers including respiratory therapists across California. Ms. Tugade states SEIU is in favor of having educational and career advancement for respiratory therapists. However, they do not believe that a bachelor’s degree is fundamental for entry to practice. SEIU has requested to be included in these conversations.

Mr. Terry responded an entry-level bachelor’s degree is one of many scenarios being considered, but is not the only scenario.

Bridgette LaMere stated she believes in advancing skills and moving forward, but she wants the Board to ensure grandfathering is included in the transition so older therapists don’t have to worry about losing their jobs. Respiratory therapists are already short staffed and there are not a lot of bachelor’s degree programs available to attend. She does have a bachelor’s degree and feels it is important to keep advancing skills. She added, it seems like small focus groups would not represent the large number of respiratory therapists in California.

Mr. Hernandez shared additional information on educational opportunities in California. About 6 years ago, the State legislature approved the institution of allowing baccalaureate degrees to be offered at the community college level so 15 were piloted. About a year ago, the legislature sunseted the pilot and allowed permanency for these 15 baccalaureate degrees in different sectors, about 40% of which are in healthcare and 2 are in respiratory care. Moving forward, all community colleges have the opportunity to apply to offer a baccalaureate degree. The process allows for 15 to be approved twice a year. In the last cycle, 3 new respiratory care baccalaureate degree programs have been approved: Crafton Hills College, in Southern California will be starting their program in Spring 2024; West El Camino College in the Los Angeles area is slated to start Fall of 2023; and Foothill College in the Bay Area peninsula though the start date for its program has not been confirmed. Therefore, including the 2 current programs, Modesto Junior College and Skyline College, that makes a total of 5 at the community college level throughout the state particularly for respiratory care

Ms. Williams inquired how many students have enrolled in those classes and what will distinguish those with a bachelor’s degree from those without?

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Mr. Hernandez responded California traditionally has had an associate degree as the entry into practice. However, when you look across the nation, there are many programs that are at bachelor's level that provide for entry into practice. So, there is an opportunity to get at that entry into practice level. When you look at the elements of education and the time it takes comparing the bachelor's degree graduate and the associate degree graduate, those prepared at the bachelor's degree level complete more in theoretical aspects to respiratory care and may be completing more clinical practice. The general education often provides for a greater level of critical thinking and the ability to do that critical thinking at the bedside.

Ms. Williams stated, there are a lot of people right now in respiratory care that do not have a bachelor's degree. They have learned through hands on which can teach a lot more than book knowledge. If we are adding another element, what is the difference?

Mr. Hernandez responded, one element that came out of the prior study sessions is that the complexity and high level of acuity has changed over the years in terms of entry into practice. The upcoming focus groups the Committee will be conducting will include questions around that to get an idea of whether the educational level needs to change in order to meet competency and patient safety.

Mr. Terry added the California Workforce Study did demonstrate a hiring preference for people that are prepared with a bachelor's degree. Many of the states across the country are also looking into the idea of a bachelor's degree as an entry level so to keep our license reciprocal with other states, we need to consider this as well for the future, not necessarily for the current workforce.

Dr. Mehta inquired if a person with a bachelor's degree becomes a respiratory care practitioner, can they perform more complex procedures and are we expecting them to handle more or is it more for academic and administrative advancement?

Mr. Hernandez responded, if you look at where the profession has been and where it is now, new graduates are able to function with less training. What the Committee will be exploring is how much extra training is needed for an associate degree graduate. The complexity and critical thinking have changed in terms of what is required for the practitioner of today and tomorrow.

Hajar Williams stated she has been practicing respiratory therapy for almost 18 years and understands what the Board is trying to do. Her concern is for the current members of the workforce who do not have a bachelor's degree. What is the plan to have people grandfathered in? An additional concern is the number of colleges available to complete a bachelor's degree, as well as locations. In Northern California, there are only 2 programs available to get a bachelor's degree. The workforce is already stretched thin. Is there a plan to address that?

Mr. Terry reiterated the Board has not concluded that a bachelor's degree will be a requirement for entry to practice. That is what the Committee is examining in addition to other models for incorporating a bachelor's degree into the practice of respiratory care. In addition, anything done will have the proper planning so that the California workforce is not endangered. That would include grandfathering in anyone who is currently licensed and having a step wise implementation in the future. It is not something that will happen tomorrow. It would be many years in the future before it is a full requirement.

Gisella Thomas who has been a practicing respiratory therapist for 53 years, stated she is also concerned about the number of schools able to teach respiratory therapist at the bachelor's degree level. The field is already short staffed particularly in the past 3 years with Covid. Three more schools for a bachelor's degree in respiratory therapy in not enough. Many more would be needed.

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Reza Pejuhesh, Board Legal Counsel, asked for clarification that the number of schools being discussed are community colleges that have recently been approved for respiratory care bachelor's programs, and the number of schools out there is not limited to just those community colleges. Additionally, he reiterated this type of implementation would occur over a long period of time and schools would have the opportunity to adjust and adapt to whatever is ultimately decided.

President Guzman agreed and added these degree advancement programs would be available online.

Ms. Nunez stated anyone who is currently practicing respiratory care would be grandfathered in. Nobody would be out of a job. Additionally, in the past when requirements were changed, the Board has made provisions for reciprocity so that people from other states could also be grandfathered in.

Krystal Craddock stated she has been a respiratory therapist for 15 years and in that time, the field has grown so much. Rob Chatburn and colleagues wrote a great paper in the Respiratory Care Journal about where the field is going. When she started, RTs were paid per procedure, now hospitals are being reimbursed based off value and outcomes. The profession needs to grow. RTs are making complex case care plans for patients, seeing them in the outpatient arena and providing them with advanced therapy. If RTs are going to be able to practice more independently to the full extent of their scope and perform more complex care and care management, then the profession really should be looking at the bachelor's degree becoming a minimum. This is just another step along the way. The field of healthcare and health reimbursement is changing, and the respiratory care field needs to change with it.

Gisella Thomas stated her concern is not about increasing education levels for respiratory therapists, but about there are not enough educational institutions to prepare respiratory therapists. There should be more planning around the educational level and reimbursement as respiratory therapists work is not being reimbursed at the level it should. Maybe the Board should address this.

Hajar Williams inquired if the general public will have access to the focus group information. She agrees with the direction the profession is moving but feels the Board should be looking into patient ratios as well. If the standards are being raised in one area, then we should start looking at raising the standards of what employers are able to do with respiratory therapists.

Ms. Nunez stated currently the information is not available to the public. However, the Board's Professional Qualifications Committee will conduct its focus group sessions and will compile a report to be presented to the Board for review. The public will have access to the information at same time the other Board members see the report and it will be open for discussion by all at the June meeting.

Mr. Hernandez stated the focus groups will be looking at, not only the minimum licensure requirements, but also other issues such as a timeline. The Committee is in an exploratory phase and will come back at the next Board meeting with the focus group responses.

Ms. Nunez added therapist to patient ratios as well as reimbursement are important issues. The Board has tried pursuing therapist ratios in the past but has not been successful. She agrees this is an avenue the Board should consider as well.

Mr. Terry stated those things will be addressed in the Strategic Plan recently passed.

Jason Villavert, a respiratory supervisor at Kaiser, stated he doesn't have a bachelor's degree but has been a respiratory therapist for 22 years and has been very active in the field teaching. He agreed with Ms. Williams, there is no difference between a bachelor and associate degree in terms of the work RTs do other than if an RT wanted to go further into the profession to advanced care

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practitioners, management and so forth. At the facility level, there is no difference between an associate and bachelor's RT, everything is evidence-based practice. He added he would be interested in being involved in one of the focus groups as he would like to see the profession grow. He agrees with a bachelor's requirement but feels there is a time and place for that requirement in terms of the profession.

Erica Contreras, a respiratory care practitioner at Kaiser has been an RCP for 21 years. The pandemic has caused the profession to be short staffed with RCPs enduring long work shifts. Respiratory care is a difficult to fill specialty so if a bachelor's degree is required to continue practicing, the consequences will be felt by the patients. They will not have enough experienced respiratory therapist to coach them through life saving breathing techniques, educate them on the care they will need to continue at home, enough RTs to reach their bedside during emergent calls, or manage their ventilators and other life sustaining machines and the list goes on. It makes her anxious that respiratory care is moving in a direction where there will no longer be time to coach and educate patients and provide them with compassionate care because the profession will lose hundreds of thousands of respiratory care practitioners due to a lack of a bachelor's degree (she added she wrote her statement prior to finding out that existing RCPs would be grandfathered in). Ms. Contreras also expressed her concern that there are not enough schools to meet the bachelor's requirement.

Ivory, RCP, has been a respiratory therapist for 20 years and currently works for Kaiser. She asked co-workers their opinions about the bachelor's degree minimum and found nobody was against additional education. Their concerns were about a mandate to make it a requirement. The timing is not right in terms of having this conversation with the pandemic, layoffs, economic stress, increased workloads, and just overall stress in the workplace.

President Guzman responded the current workforce would not be affected by any future changes. Those that are already working would not be made to do anything. If it ever came to pass, it would be for the future RTs entering the profession.

Matt Henrick, RCP for Kaiser for 20 years inquired if a bachelor's degree is required in the future, how does the Board plan to protect patient care. It would change job descriptions. A person with a bachelor's would be allowed to work in the ICU and the rest would be considered like a technician or respiratory therapist assistant and do floor care only and probably for a lower pay. He has seen this in other fields like physical therapy. How does the Board plan to protect patient care if this is endorsed?

Mr. Hernandez responded the Board appreciates all the comments and reiterated the Committee is in the exploratory phase. The next step will be working with the focus groups and bringing that information back to the Board for discussion.

Mr. Terry added the Board is looking at a range of possibilities which is why it is working with the focus groups to look at several different models of how the Board could incorporate a bachelor's degree. The Board is currently exploring, and nothing has been decided at this point.

President Guzman thanked the public for attending and sharing their thoughts and input. The Board is taking into consideration everyone involved so it is important to remain engaged. Conversations about advancing the profession have been going on for many years. He feels it is appropriate and important that the Board also explore the possibilities. He thanked Mr. Hernandez and Mr. Terry for all the work they are doing exploring these issues.

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5. LEGISLATION OF INTEREST

Ms. Molina provided a summary of bills that have been identified as legislation of interest as of February 21, 2023, including staff recommended positions. She added it is very early in the legislative cycle so limited action has been taken on many of the identified bills. A few of the bills have been referred, but none have been heard by any of the policy committees so information regarding sponsors and more in-depth intent and analysis has yet to be published.

AB 883 (Mathis) - Staff Recommended Position: Watch
Title: Business licenses: United States Department of Defense Skill Bridge program.
Status: Introduced 2/14/23

Current law requires a board to expedite the initial licensure process for an applicant who documents that he or she has served as an active-duty member of the Armed Forces and was honorably discharged. This bill would require boards to also expedite application processing for members of the military and honorably discharged veterans enrolled in the Department of Defense's Skill Bridge program. The Skill Bridge Program connects

employment.

Status Update: The bill was referred to the Assembly B&P on 2/23 (no hearing date set)

Mr. Hernandez moved to approve the staff recommended position.

The motion was seconded by Mr. Terry.

Public Comment: None received.

M/Hernandez /S/Terry
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

AB 996 (Low) – Staff Recommended Position: Watch
Title: DCA: continuing education: conflict-of-interest policy.
Status: Introduced 2/15/23

Existing law provides for the licensure and regulation of professions and vocations by entities within the Department of Consumer Affairs. Under existing law, several of these entities may require licensees to satisfy continuing education course requirements. This bill would require boards within DCA who require licensees to complete CE to develop and maintain a conflict-of-interest policy that discourages the use of any CE course where the provider of the course has an economic interest in a product or business promoted in the course.

Status Update: The bill was referred to the Assembly B&P on 2/23 (no hearing date set).

Mr. Goldstein moved to approve the staff recommended position of watch.

The motion was seconded by Mr. Hernandez.

Comments:
Dr. Mehta recommended the position of support if amended. The amendment would be to the second paragraph where it states, "at minimum, discourages the qualification of any continuing education

course …" Dr. Mehta would like that removed because if there is any new drug or device on the market, the companies usually use experts, affiliated with academic institutions. When these practitioners are given CEs or are educating people about the drug or devices, that is a lot of education time and should be counted as a CE as long as they disclose the conflict of interest.

Reza Pejuhesh, Legal Counsel, noted if that one section is amended, there would not be much left to the bill.

Dr. Mehta explained the problem she has with the wording is the line that states "discourages the qualification of any continuing education course …" As providers and practitioners, licensees spend time listening to speakers talk. It is up to the practitioner to decide if they will use the product or not but it should count as a CE for the time spent listening to the speaker as long as the conflict of interest is mentioned up front.

Ms. Nunez reiterated, Legal Counsel is saying that the Board can't support the bill if amended because if it is amended to remove that part, there is no longer any substance to the bill. If the Board wants to go in that direction, the bill would need to be opposed.

Mr. Pejuhesh agreed with Ms. Nunez and added that unless the Board has something else it would like to suggest being included in the bill, it would make better sense just to oppose it. He presumed the intent of the bill is that a conflict of interest exists if somebody is using a continuing education course as a pretext to market their product and or device and push their product under the guise of it being a legitimate established, approved continuing education course.

President Guzman requested clarification from legal counsel that the word "discouraged" in the bill does not prohibit the use of that continuing education.

Mr. Pejuhesh responded that is correct. He corrected his earlier comment that if you cut that piece, there would not be much left. Technically, what would be left is that they would have to establish a conflict-of-interest policy.

Dr. Mehta stated there is stringent criteria to qualify as a CE. A marketing gimmick cannot just be made into a CE.

Ms. Molina stated the bill will continue to be monitored (even with a "Watch" position) and will be reported on at the next Board meeting. Additionally, if there were amendments between meetings, the Board has a policy that allows staff to reach out to the Executive Committee if the position needs to be modified and bring it back to the full Board to ratify at the next meeting.

Dr. Mehta inquired if these modifications will be made by other similar boards, then this Board needs to give some feedback so that those modifications are relevant and the RCB has proposed something that matters instead of waiting for other boards to propose something.

Reza Pejuhesh, Legal Counsel, responded this bill would apply to most of the boards under the Department of Consumer Affairs, identified under Business and Professions Code section 101. He questioned to what degree the Board is able to manage the content of the courses out there and whether what is accepted for CE credit is beyond the Board's direct control.

Ms. Nunez responded it is not a highly regulated field. The RCB approves other providers to approve CE courses. With few exceptions, so far, the Board has not had many issues. It is a paper process, and she is unaware if anyone has ever been denied approval. She added she feels this legislation changes the onerous so that it does not disqualify someone, but rather puts them on notice that CE is not a sales pitch. She added Dr. Mehta make an excellent point and feels it important to make sure

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author is aware of that. She suggested taking a watch position but send a letter expressing Dr. Mehta's concerns.

Dr. Mehta added, people representing these companies are highly regarded experts in their field and should have the opportunity to speak. Additionally, the time spent listening to these experts should not be wasted time for the practitioner as long as the conflict of interest has been made evident so the practitioner can discern how to receive the information.

Ms. Molina reiterated Ms. Nunez' comments adding, taking a Watch position does not preclude the Board from reaching out to the author and expressing those concerns that Dr. Mehta has shared. This would put it on their radar and perhaps they will receive feedback from other parties which may result in amendments down the road.

Ms. Williams inquired if the Board should put off this discussion until the next meeting after those requested changes are sent in and feedback is received.

Ms. Molina stated it will be brought back at the June meeting and if there are any developments, the Board can change its position at that point.

Vice President Goldstein stated Dr. Mehta's point is well taken. This bill is quite irrational. He added, it is early in the legislative session. Some of these bills can be placeholders and often the same text will not be there in 3 months.

Vice President Goldstein amended the motion to watch the bill, but to provide a letter of feedback based on the Board's discussion to the author.

Public Comment: None received.

M/Goldstein /S/Hernandez
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

AB 1070 (Low) - Staff Recommended Position: Watch
Title: DCA: vacancies.
Status: Introduced 2/15/23

Existing law requires the director of DCA to notify the appropriate policy committees of the Legislature within 60 days after the position of chief or executive officer of any board, as defined, within the department becomes vacant, as specified. This bill would make a non-substantive change to the vacancy notification requirement provision which essentially removes the reference to reporting for bureau chief vacancies.

Status Update: May be heard in Committee after 3/18 – no hearing has been scheduled yet

Mr. Hernandez moved to approve the staff recommended position of Watch

The motion was seconded by Mr. Terry.

Public Comment: None received.

M/Hernandez /S/Terry
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

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AB 1741 (Waldron) – Staff Recommended Position: Watch
Title: Healing arts: clinical laboratories: personnel.
Status: Introduced 2/17/23

Existing law provides for the licensure, registration, and regulation of clinical laboratories and various clinical laboratory personnel by the State Department of Public Health. Existing law requires the department to issue a clinical laboratory scientist's or a limited clinical laboratory scientist's license in specified areas of laboratory specialty or subspecialty. Existing law requires an applicant to meet both an educational requirement and a training or experience requirement to qualify for admission to the examination for this license. This bill would allow a person's experience as an unlicensed person performing specified duties in a California-licensed laboratory for at least 18 months to count toward qualification of licensure. Existing law authorizes unlicensed laboratory personnel who have earned a high school diploma or its equivalent and who meet specified training requirements to perform specified activities in a licensed clinical laboratory under the direct and constant supervision of a physician and surgeon or licensed person, including biological specimen collection, assisting in preventive maintenance, and preparing and storing reagents and culture media. Existing law authorizes unlicensed laboratory personnel who do not meet the specified training requirements only to perform specimen labeling, handling, preservation or fixation, processing or preparation, transportation, and storing. A violation of these provisions is a crime. This bill would revise the activities that may be performed by an unlicensed person to specify those activities that may be performed under direct and constant supervision of a physician and surgeon or licensed person, those activities that may be performed under supervision and control, as defined, and those activities that may not be performed by an unlicensed person.
Existing law prohibits unlicensed laboratory personnel from performing any test or part thereof that involves the quantitative measurement of the specimen or test reagent or any mathematical calculation relative to determining the results or validity of a test procedure. The bill would provide an exception to this prohibition if the unlicensed person is assisting a licensed physician and surgeon or a licensed person, other than a trainee, in a licensed clinical laboratory. The bill would also prohibit unlicensed laboratory personnel from releasing waived, moderate, or high-complexity testing.

Status Update: May be heard in Committee after 3/18 – no hearing has been scheduled yet

Vice President Goldstein moved to approve the staff recommended position.

Mr. Hernandez seconded the motion.

Public Comment: None received.

M/Goldstein /S/Hernandez
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

SB 259 (Seyarto) - Staff Recommended Position: Watch
Title: Reports submitted to legislative committees
Status: 2/9/23 Referred to Senate Committee on Governmental Organization

Existing law requires a state agency that is required or requested by law to submit a report to the Members of either house of the Legislature to post the report on its website.
This bill would require a state agency to also post on its website, any report submitted to a legislative committee – for example our Sunset Report.

Status Update: This bill is set to be heard before the Senate Governmental Organization Committee on 3/14

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Mr. Hernandez moved to approve the staff recommended position.

The motion was seconded by Dr. Mehta.

Public Comment: None received.

M/Hernandez /S/Mehta
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

SB 372 (Menjivar) – Staff Recommended Position: Watch
Title: DCA: license and registrant records: name a gender changes.
Status: 2/9/23 Introduced and referred to Senate Rules Committee for assignment.

This bill would require a board to update a licensee's record, including records contained within an online license verification system, to include the licensee's updated legal name or gender if the board receives government-issued documentation demonstrating that the licensee's legal name or gender has been changed. The bill would require the board, if requested by a licensee, to reissue specified documents (in our case the wall certificate and current pocket license) with their updated legal name.

Status Update: This bill is set to be heard before the Senate BP&ED Committee on 3/27

Mr. Hernandez moved to approve the staff recommended position.

The motion was seconded by Mr. Terry.

Public Comment: None received.

M/Hernandez /S/Terry
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

SB 764 (Padilla) – Staff Recommended Position: Watch
Title: DCA: regulatory boards: removal of board members.
Status: 2/17/23 Introduced and referred to Senate Rules Committee for assignment

Existing law authorizes an appointing authority to remove from office any member of any board within DCA for continued neglect of duties, incompetence, or unprofessional or dishonorable conduct.
Existing law authorizes the Governor to remove a member of a board or other licensing entity in the department from office if it is shown that the member has knowledge of the specific questions to be asked on the licensing entity's next examination and directly or indirectly discloses those questions in advance of or during the examination to any exam applicant.
This bill would authorize any appointing authority to remove a member for disclosure of confidential exam information – not just Governor appointees.

Status Update: 3/1 – Referred to Senate BP&ED Committee and can be heard after 3/20

Mr. Terry moved to approve the staff recommended position.

The motion was seconded by Mr. Hernandez.

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Public Comment: None received.

M/Terry /S/Hernandez
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

SB 802 (Roth) – Staff Recommended Position: Watch
Title: **Licensing boards: disqualification from licensure: criminal conviction.**
Status: 2/17/23 Introduced and referred to Senate Rules Committee for assignment

Existing law authorizes a board to deny a license on the grounds that the applicant has been subject to formal discipline or been convicted of a crime substantially related to the practice. Existing law also requires a board to notify the applicant in writing, if the board decides to deny an application for licensure based solely or in part on the applicant's conviction history. This bill would require a board to notify the applicant in writing within 30 days after a decision is made, as specified.

Status Update: This bill is set to be heard before the Senate BP&ED Committee on 3/27
Note: according to the Committee this is a placeholder bill.

Mr. Terry moved to approve the staff recommended position.

The motion was seconded by Mr. Hernandez.

Public Comment: None received.

M/Terry /S/Hernandez
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

6. Discussion and Possible Action Regarding Comments and Adoption of Proposed Amendments to California Code of Regulations, Title 16, Sections 1399.349, 1399.350, 1399.350.5, 1399.351, 1399.352, 1399.352.5, 1399.352.7, and 1399.381 and Adoption of 1399.352.6 (Continuing Education, Fines) following the 15-day Comment Period to Modified Text

Ms. Nunez directed the Board Member's attention to the attachments for item 6. She shared the background timeline from June 2022 detailing the process before making public notice and the process of the 45-day comment period. At the October 28, 2022, Board meeting, the Board recommended several changes. The language was amended and submitted for another 15-day comment period which closed on January 13. No comments were received on the modified text. The regulatory language was presented to the Board for final approval. Ms. Nunez added from the Board's discussion at the last meeting, it was clear that all types of health care facilities should be included and not limited to acute care. She pointed out the update made (on page 7 of attachment 6a), under subdivision (h), item (2), changed from "acute care hospital" to "health care facility" making sure Board members were aware of that change before making their final approval.

Mr. Hernandez moved to approve and adopt the proposed regulations as described in the modified text and notice from December 2022 of the Board's Proposed Rulemaking to Amend California Code of Regulations, Title 16, Sections 1399.349, 1399.350, 1399.350.5, 1399.351, 1399.352, 1399.352.5, 1399.352.7, and 1399.381 and to adopt Section 1399.352.6 having received no adverse comments during the 15-day modified text public comment period, and to delegate to the

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Officer the authority to make any technical or nonsubstantive changes that may be required in completing the rulemaking file or in promulgating the regulation.

The motion was seconded by Mr. Terry.

Board Member comments: None received.

Public Comments: None received.

M/Hernandez /S/Terry
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

7. PRACTICE OF RESPIRATORY CARE BY LVNs

7a. SB 1436 Review

Ms. Nunez explained the progress stating SB 1436 was passed by the legislature and signed by the Governor. The 2 major changes were Business and Professions Code sections 2860 and 3765. Section 2860, subdivision (b) within the Vocational Nursing Practice Act, outlines that LVNs can perform respiratory care basic tasks identified by our Board, while section 3765 allowed for an exemption LVN's practicing in the homecare setting. She provided some background stating the ongoing issue of LVN's practicing respiratory care appeared to have started in the 1990's with some erroneous interpretations of skilled nursing services, and has since expanded through different areas and different types of facilities. This trend was starting to emerge in sub-acute care and the Board was receiving a lot of complaints which included patient harm. When the Board sought the change to B&P section 2860 to be specific as to what respiratory care tasks LVNs could perform, it was brought to the Board's attention that respiratory care provided in the homecare setting is almost exclusively done by LVNs. In support of access to care, the Board agreed to that exemption. However, both legislative changes require separate regulations to enact them.

7b. Basic Respiratory Tasks and Services-Status

Ms. Nunez reviewed item 7b, proposed language concerning basic respiratory tasks and services which was approved by the Board at the October 28, 2022, meeting to move forward with regulations. The closing comment period was December 28, 2022, and the Board did receive a lot of feedback. A great deal of the feedback came from the homecare industry thinking this proposal applied to them but there were also some other types of facilities that came forward stating this would impact them as well. As a result, the Board did get a request for a hearing on these regulations but is pausing its efforts in order to address some concerns raised before holding that hearing. She asked members to please offer input if anyone feels this is proceeding in the wrong direction. Currently, this regulation package is on hold.

7c. Home Care Regulations-Status

Ms. Nunez reviewed item 7c stating the Board held a stakeholder meeting for homecare on January 27, 2023. Included on the agenda was identifying respiratory tasks and services currently provided in the homecare setting, as well as a discussion on training guidelines. A stakeholder provided a wealth of information which helped Ms. Nunez outline tasks that are being performed in the home as a starting point. She hopes to initiate the regulatory process related to homecare at the end of the year after working out some consistency in the types of training expected.

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7d Proposed Legislation for Board Approval

Ms. Nunez reviewed a legislative proposal, Item 7d. She explained the problem is that while SB1436 resolved issues the Board had, in doing that, it brought forth other concerns from home and community-based facilities. Item 7d lists all the types of facilities that have issues. While the Department of Disabled Services (DDS) has some concerns with the legislation, they are not opposing or supporting it but are on alert and want to be able to have access to LVNs. DDS indicated that the California Department of Public Health (CDPH) regulates who can and cannot practice at these licensed intermediate care facilities. Ms. Nunez gave some background on what she learned: In the late 80's and 90's, these types of facilities were changed to accept respiratory patients and a lot of them were using skilled nursing services and including respiratory care in that definition. Later, nurse-patient ratios came about and respiratory is not a part of skilled nursing services. The nurse-patient ratios are there to provide skilled nursing service and yet they are still using nurses to provide respiratory care as it is a cost benefit to using LVNs which may be the drive behind this. In some instances, it just wouldn't be feasible to have a respiratory therapist in a home setting in a one-on-one situation. She added a lot of people are in fear they would be re-institutionalized if the Board were to go forward with the basic regulations that limits the tasks LVNs can perform, except in homecare, when there are facilities that use LVNs to perform respiratory care as well. In trying to address this problem, the proposed legislation in item 7d states: "Licensed vocational nurses providing respiratory tasks and services identified by the board at a licensed Adult Day Health Care facility, a license Pediatric Day Health & Respite Care facility, a license Congregate Living Health Facility, a licensed Intermediate Care Facility or as part of daily transportation and activities, if the licensed vocational nurse complies with the following:

(Ms. Nunez explained that if the Board approves moving forward with this legislation, it would be word smithed with more detail to allow providers to assist patients in daily activities outside of the home.)

(1) Before January 1, 2026, the licensed vocational nurse has completed patient-specific training satisfactory to their employer.
(2) On or after January 1, 2026, the licensed vocational nurse has completed patient-specific training satisfactory to the employer and maintains a current and valid certification if competence from the California Association of Medical Product Suppliers or the California Society for Respiratory Care for tasks performed in accordance with guidelines that shall be promulgated by the board no later than January 1, 2026.

Ms. Nunez stated there was support from the California Association of Medical Product Suppliers (CAMPS) because it is a conduit between the medical devices that are issued to homes and different facilities. They have an RCP on staff that guides the LVNs in using that equipment.

Ms. Nunez explained a second component was added from a concerned consumer perspective. Respiratory therapists are not being used at some of these sites. When there is more than one patient, a respiratory therapist should be on staff at all times. Language is included within the proposal to attempt to collect data. Ms. Nunez has talked with Jennifer Tannehill with Aaron Reed and Associates who has offered to assist the Board in meeting with various individuals as it is sometimes difficult to locate a point of contact at CDPH within a certain area of expertise. She added, in the meantime, the Board is looking to have something established legislatively to ensure this data will be shared.

Vice President Goldstein move to allow the Executive Officer to pursue this legislation, work with the Executive Committee as appropriate, and return to the Board in June with a full update.

Mr. Terry seconded the motion.

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Board comments:

President Guzman stated he agrees there is no excuse for facilities that are not employing a respiratory therapist. It is obviously an issue if they don't get reimbursement.

Mr. Hernandez commented on getting more data as it seems to be more complex in terms of patients who are able to go home and perform their daily activities. He added he appreciates the work that has been done thinking about the patients and what is needed for them to have a balance and quality of life.

Jennifer McLelland stated she is a parent of an almost 12-year-old boy who has a tracheostomy and who uses a ventilator at night due to a rare genetic syndrome. The thing she cares about is the system that makes it possible for children like her son to live healthy, happy lives at home with their families. Those systems are complicated, underfunded, and fragile. In the 11 years her son has been at home, they have depended on home nursing care provided by LVN's. She is grateful that this Board has been receptive to the concerns of the home care community. There are 2 specific groups currently providing trach and vent care that are left out of the proposed wording of B&P 3765. Those groups are Individual Nurse Provider LVNs (INPLVNs) and LVNs who work in school settings providing direct care to trach and trach vent kids. She wanted to make sure that when 3765 goes forward these two specific groups are included in the home care carve out. Ms. Nunez has been very helpful and has assured her that the Board's intention is to keep homecare functional and improve it. She thanked the Board for working to strengthen the home care system that makes her son's life at home possible.

Anna Leach-Proffer, Attorney with Disability Rights California, stressed the importance of approving this proposed legislation to allow the continued process to ensure that ventilator users living at home and in home like settings (particularly those in congregate living health facilities) are allowed to continue receiving services from their current providers They have received a number of calls from ventilator users and family members of ventilator users who are terrified about the potential impact of SB1436 worried that it could result in forced institutionalization because there is a shortage of respiratory therapist available to provide in home care at the current medical rate. It wouldn't be a sustainable model to try to fill those needs with licensed respiratory therapists at this point. She thanked the Board for acknowledging there were unintentional impacts of SB1436 and looking at ways to ensure ventilator users are still able to safely receive the ventilator care they need from trained LVNs. She added they would be happy to be involved in the ongoing process to make sure it encompasses all the necessary settings. She offered to share her Department of Health Care Services (DHCS) contact information with Ms. Nunez.

Jerry Hammersley, respiratory therapist for 46 years and general manager of a home medical device retail company and who has been providing homecare for the last 24 years stated his primary customer base is congregate living health facilities. These patients are at home in these congregates. Congregates have not had a rate increase since the year 2000. That's 23 years running off the same daily rates that do not accommodate for the hiring of respiratory therapists. He's been training LVNs to care for patients on the ventilator. It would be great if there was reimbursement for respiratory care practitioners in the home but as it stands right now there is no reimbursement. As a DME company, we are reimbursed for the equipment only not for providing care or any treatment in the home. Congregate facilities could not afford to hire respiratory therapists. He supports training the LVNs to get them certified and have some sort of amendment to their license that includes ventilator certification.

Mary with the Congregate Living Health Facilities Association states they represent about 260 congregate living health facilities (CLHFs) providing long term or rehab care services in a small 6 bed community. They do not believe SB1436 should apply to CLHFs for the following reasons: CLHFs

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have been employing LVNs since the 1980's taking care of trach vent patients and providing intermediate respiratory services. She added it is possible to continue to safely provide trach vent care to patients with proper trach vent training provided to their LVNs in an accredited and competent training program put together by both the RCB and LVN boards. Currently CLHFs are the only alternative option for trach vent patients other than subacute or institutional life care. SB1436 would adversely affect these patients. CLHFs are currently working with the DHCS to increase funding. The Medi-Cal rates have not increased since the early 90's or even 80's. They are at the brink of closing their doors and the respiratory care therapist mandate would force their patients to move out and end the only alternative means for vent trach patients to live in a home versus institutional care. They would like to see a trach vent patient training program for CLHFs like what has been done for home health and ask that CLHFs be included in the same category as home health.

Robbie Leonard stated he is a resident in a congregate living health facility since 2008. He chooses to live in a congregate living health facility instead if an institution for the following reasons: Professional specialized care by LVNs, ventilator experience, emergency response time, and quality of life. The LVNs do a lot for their patients that other facilities do not allow or don't have the experience. Ventilator experience is key because if the LVN doesn't know how to troubleshoot ventilator issues in an emergency, he could lose his life in a few minutes. Congregate facilities are trained to keep him alive, and he trusts these RT trained nurses.

M/Goldstein /S/Terry
In favor: Goldstein, Guzman, Hernandez, Kbushyan, Mehta, Terry, Williams
MOTION PASSED

11. PUBLIC COMMENTS ON ITEMS NOT ON THE AGENDA

President Guzman stated the Board is unable to take action on any items not listed on the agenda. The only action the Board may take is to decide whether to place an item on a future agenda. He asked if anyone would like to make a public comment on anything that was not on the agenda?

Public comment: no comments received.

12. FUTURE AGENDA ITEMS

President Guzman asked Members if they had any specific items, they would like included on the next meeting agenda.

Mr. Terry requested that future agendas include discussion on SP Goal 2.4 "Collaborate with professional organizations and schools to perform a needs assessment for the advanced respiratory practitioner role in California to address the projected shortage of physicians and the evolving role of being a physician extender."

Mr. Hernandez indicated the Professional Qualifications will be sharing an update regarding the focus group sessions at the next meeting.

Public comments: No comments received.

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CLOSED SESSION

The Board convened into Closed Session, as authorized by Government Code Section 11126c, subdivision (3) at 12:51 p.m. and reconvened into Public Session at 1:12 p.m.

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ADJOURNMENT

The Public Session Meeting was adjourned by President Guzman at 1:13 p.m.

RICARDO GUZMAN	STEPHANIE A. NUNEZ
President	Executive Officer

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