

MEETING MINUTES
May 20, 2024
8:30 A.M. – 5:00 P.M.
PHYSICIAN ASSISTANT BOARD
2005 Evergreen Street
Hearing Room #1150
Sacramento, CA 95815

1. Call to Order by President

President Earley called the meeting to order at 8:36 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. (arrived at 8:41 a.m.)
Randy Hawkins, M.D.
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, Administrative Analyst
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 March 4, 2024, Board Meeting Minutes

M/ Vasco Deon Kidd S/ Charles Alexander to:

Approve the March 4, 2024, 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				

46 **4. Public Comment on Items Not on the Agenda**

47
48 (Note: The Board may not discuss or take action on any matter raised during this
49 public comment section that is not included on this agenda, except to decide
50 whether to place the matter on the agenda for a future meeting. [Government Code
51 Sections 11125 and 11125.7(a).])

52
53 No public comment.

54
55 **5. President's Report**

56
57 Dr. Earley reported Dr. Kidd was featured in the Becker's 231 Black Healthcare
58 Leaders to Know in 2024. Dr. Earley congratulated Dr. Kidd on this recognition.

59
60 Dr. Kidd stated that Becker's 231 is a trade magazine and the most widely read
61 publications among healthcare executives and leaders. Dr. Kidd expressed his
62 appreciation for the opportunity and thanked everyone.

63
64 No public comment.

65
66 **6. Executive Officer's Report**

67
68 Ms. Khan referred members to Agenda Item 6 and reported the following.

69
70 A. Personnel

71
72 Effective April 8, 2024, Pearl Her has been promoted to the Administrative Analyst
73 position. Recruitment is under way to fill the vacant Enforcement and Licensing
74 Support Technician position, and Board staff anticipates filing the position soon.

75
76 Effective May 31, 2024, Linda Serrano will be joining the Board as the new
77 Complaint Analyst. Ms. Serrano has 12 years of experience analyzing complaints
78 with the Medical Board of California (MBC).

79
80 B. 2025 Sunset Review Process Overview

81
82 The sunset review process involves joint oversight hearings by the California State
83 Assembly Business and Professions Committee and the Senate Business,
84 Professions, and Economic Development Committee (Joint Oversight Committee) to
85 evaluate boards and bureaus under the Department of Consumer Affairs (DCA). This
86 process allows the DCA, the Legislature, the boards, and interested parties and
87 stakeholders to discuss board performance and propose improvements.

88
89 Ms. Khan explained the process of drafting the Sunset Review Report for Board
90 review and approval, submission of the report to the Legislature, and preparation for
91 the legislative hearing. Finally, if no significant concerns arise during the process, the
92 Legislature extends the Board's Sunset date by another four years, ensuring its
93 continued operation and oversight.

94
95 No public comment.

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97 **7. Board Activity Reports**

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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. Earley asked for an explanation of the process for temporary physician assistant (PA) licensure. Ms. Caldwell explained the expedited authorization for temporary licensure requirements.

B. Complaints

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

C. Discipline

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

Dr. Earley asked if there is a certain timeframe that the fines are due. Ms. Haydon reported fines are due within 60 days.

D. Probation

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

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 – 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 May 5-11, 2024, was Public Service Recognition Week and DCA honored the 3,000 departmental, board and bureau employees dedicated to protecting California consumers.

Ms. Bucciarelli reported on April 30, 2024, DCA hosted an in-person meeting with Agency Secretary Tomiquia Moss and executive leadership. The meeting served as an opportunity for DCA leaders to meet the new secretary and hear her vision and priorities.

150 Ms. Bucciarelli reported that there has been recent increase in various scams
151 targeting licensees. The scams involve individuals falsely identifying themselves as
152 board employees and telling licensees they are under investigation. Scammers
153 attempt to gather personal and/or financial information, even demanding payment.
154 Boards are urged to be vigilant and providing licensees tips on avoiding scams.
155

156 Ms. Bucciarelli reported that on April 5, 2024, DCA's Diversity, Equity, and Inclusion
157 (DEI) Steering Committee held its quarterly meeting. The Committee reviewed and
158 discussed the member application process, establishing sub-committees and
159 solicited input from Committee members on how to expand language access,
160 workforce development, and advance DEI activities in 2024. The next Committee
161 meeting will be held on July 26, 2024. Ms. Bucciarelli stated that DCA's Learning
162 Management System (LMS) has many DEI-related training courses.
163

164 Ms. Bucciarelli stated that DCA's Office of Public Affairs staff participated in two
165 Facebook live events hosted by Consulate of Mexico's Sacramento and Fresno
166 offices which staff presented "Get to Know DCA" in Spanish and shared an overview
167 of consumer and licensing information. Another "Get to Know DCA" virtual event was
168 held with Consulate of Mexico in San Bernadino on May 14, 2024.
169

170 Ms. Bucciarelli stated that travel expense claims must be submitted no later than
171 June 7, 2024, and claims submitted after this date will be processed but payment will
172 not be issued until after July 5, 2024. All travel expenses and advances submitted on
173 or after July 1, 2024, will be processed for payment after the budget is signed.
174

175 Ms. Bucciarelli reminded board members that they must complete Board Member
176 Orientation Training within one year of their appointment or re-appointment.
177 Trainings will be offered virtually on June 18 and October 22, 2024, via LMS.
178

179 Ms. Bucciarelli thanked all board members and executive officers for helping achieve
180 nearly 100% annual Form 700 compliance.
181

182 No public comment.
183

184 **9. Budget Update**

185

186 Andrew Trute, Budget Analyst, referred members to Agenda Item 9 and reported the
187 following fund condition and expenditure reports.
188

189 Mr. Trute reported in FY 2023-24, the Board has a budget of about \$3.3 million. The
190 Board is projected to use 38.38% of its expenditure on Personal Services which
191 includes salaries and benefits; 34.87% for Operating Expenses & Equipment which
192 includes contracts, purchases, and travel; and 26.04% for Enforcement which is for
193 the Office of Administration Hearings (OAH) and the Attorney General (AG). The
194 Board is estimated to have a 0.71% in Reversion.
195

196 For the Board's fund condition, Mr. Trute stated for FY 2022-23 actuals, the Board
197 has a beginning balance of \$4.5 million with prior year adjustment of \$51,000, giving
198 the Board an adjusted beginning balance of \$4.55 million. The Board has an overall
199 revenue of \$2.8 million, and total expenditure of \$3.1 million, which gives a fund
200 balance of 4.2 million (15.0 months in reserve).
201

202 Mr. Trute stated for current year 2023-24, the Board has a beginning balance of \$4.2
203 million, estimated revenue of \$2.96 million, estimated expenditure of \$3.4 million,
204 giving a fund balance of \$3.8 million (13.2 months in reserve). Budget year is based
205 on Governor's budget and budget year +1 is based on realized. There are no
206 immediate concerns for this fund.

207
208 Mr. Trute stated for fiscal month nine 2023-24 projected expenditures, there is about
209 \$1.3 million in personnel services and about \$2 million in operating expenses and
210 equipment for a total of \$3.3 million, which created the surplus of about \$24,000, or
211 just under 1%. There are no immediate concerns for this fund.

212
213 No public comment.

214
215 **10. Report on Medical Board of California Activities**

216
217 Dr. Hawkins, President of the MBC, reported that this will be his last report as the
218 president of the MBC. He was appointed in 2015 by Governor Brown and
219 reappointed twice by Governor Newsom. Effective June 1, 2024, after nine years
220 with the MBC he will be termed out.

221
222 Dr. Hawkins stated that MBC last met February 29-March 1, 2024, in Los Angeles
223 and will meet later in the week in Sacramento on May 23-24, 2024. He reported that
224 highlights of the meeting will include a presentation on Successful Elements of
225 Physician Health Programs with two subject area experts representing two separate
226 programs, with an in-person location at the California Board of Accountancy in
227 Sacramento.

228
229 Dr. Hawkins reported the Federation of State Medical Boards (FSMB) last met April
230 17-21, 2024, in Nashville, Tennessee. Dr. Hawkins stated that he participated
231 remotely as a delegate involving elections of officers, voting on amendments to
232 bylaws, and adoption of various guidelines and resolutions. Dr. Hawkins reported
233 that the PA Licensure Compact is now enacted in nine states; however, it is not fully
234 operational in any states. California is not included in the PA Licensure Compact.

235
236 Dr. Hawkins stated that he will be appointing two MBC Board members to a task
237 force to assist in the mental and physical health questions on the physician licensing
238 application.

239
240 Dr. Hawkins reported that maternal mortality issues were presented at the MBC
241 board meeting. California's maternal death is far from the highest, but the numbers
242 are not going down in maternal mortality.

243
244 Dr. Kidd thanked Dr. Hawkins for his outstanding service on the MBC and for his
245 report.

246
247 Dr. Kidd stated that once the seven states have adopted the compact model
248 legislation it will go into effect in about two years.

249
250 No public comment.

251

252 **11. Discussion of Possible Action on Rulemaking Proposal to Amend Title 16,**
253 **California Code of Regulations (CCR) Sections 1399.502, 1399.540, 1399.541,**
254 **and 1399.545 – SB 697 Implementation**

255
256 A. Consideration of Public Comments Received During the 15-Day Public Comment
257 Period on Second Modified Text and Proposed Responses Thereto
258

259 Kristy Schieldge, Regulations Counsel, stated Agenda Item 11 includes three action
260 items for the Board’s review. At the last Board meeting, the Board approved the
261 Second Modified Text and adopted the revised regulatory language in response to
262 comments received. The second 15-day comment period began on March 7, 2024,
263 and ended on March 22, 2024, and the Board received two comments: one in
264 support of the proposed Second Modified Text from Scott Martin on behalf of the
265 California Academy of Physician Associates (CAPA) and another comment letter
266 with recommendations and objections from Senior Legal Counsel on behalf of the
267 California Medical Association (CMA). Ms. Schieldge drew the Board’s attention to
268 page two of the memorandum that includes a summary of the comments received
269 and the proposed responses for their review. As part of the rulemaking process, the
270 Board is required to include in its Final Statement of Reasons, a summary of each
271 comment, objection or recommendation received and the reasons for making or not
272 making a change in response to those comments.
273

274 The first comment was received from CAPA on March 20, 2024, and that comment
275 offered CAPA’s enthusiastic support to the proposed regulatory language by the
276 Board released March 7, 2024, and commended the Board for its proposed
277 amendments which, in its view, correctly implements the legislative intent of Senate
278 Bill (SB) 697. The proposed response recommended by staff and Ms. Schieldge is to
279 accept the support and notify CAPA that the Board intends to proceed with the
280 adoption of the proposed language as set forth in the Second Modified Text.
281 The second comment letter from the CMA was received on March 22, 2024. There
282 were three adverse comments and recommendations or objections received in that
283 letter. In the first comment, the CMA agrees that the prior language requiring a PA to
284 ensure that a supervising physician review a PA’s training improperly places the
285 supervising physician’s responsibility on the PA. However, CMA disagrees with the
286 argument that the Board lacks authority to impose any requirements on the
287 verification of a PA’s training and qualifications beyond the existence of a practice
288 agreement. As a result, CMA recommended a modification to 16 CCR 1399.541(i)(1)
289 that adds language requiring the supervising physician to review documentation
290 when a physician assistant performs surgical procedures under anesthesia. The
291 proposed response would be to reject that comment and highlight that SB 697 struck
292 the Board’s rulemaking authority at Business and Professions Code (BPC) section
293 3502 to establish alternative mechanisms for the adequate supervision of the PA by
294 regulation. The prior language in the Physician Assistant Practice Act, used to state
295 that notwithstanding any other law, the Board may establish other alternative
296 mechanisms for the adequate supervision of the physician assistant. That language
297 was struck by SB 697. Instead, BPC section 3502 now provides notwithstanding any
298 other law, the PA may perform medical services as authorized by this chapter, and
299 there is a specified list of things that the PA has to meet in order to perform those
300 services, none of which includes complying with any regulations adopted by the
301 Board.
302

303 In addition, there is legislative history to support the interpretation. Ms. Schieldge
304 indicated that she has attached a copy of the Assembly B&P committee analysis
305 from the rulemaking file, dated July 1, 2019, and highlighted one analysis which is
306 that the law was intended to allow physicians and PAs to determine for themselves
307 the appropriate level of supervision with every licensee involved in a specific practice
308 agreement subject to discipline for improper supervision. Ms. Schieldge points to the
309 legislative analysis in Attachment 4 that CMA supported the bill and indicated in their
310 support statement for SB 697 that this bill allows for more autonomy to each medical
311 practice as to their functional relationship with their physician assistants. The support
312 statement further indicated that CMA believes these administrative fixes will help to
313 alleviate the burdens of working with PAs and increase the capacity of physicians
314 and PAs to address critical access to care. The recommendation is to reject that
315 comment and to avoid a conflict with the express authority of BPC section 3502.
316 In the second comment, CMA objects to the Board's proposed deletion of language
317 in 16 CCR section 1399.541(i)(1) and (2), that required a supervising physician to be
318 immediately available when a physician assistant performs or participates in surgical
319 procedures under anesthesia or sedation, as well as the deletion of a definition of
320 "immediately available" in paragraph (i)(3). The recommendation from CMA is that
321 the Board retain that text. The recommended response is that the Board
322 acknowledges receipt and review of the comment but has decided not to make the
323 modifications suggested by CMA. The plain meaning of BPC section 3501 controls
324 and reiterates the requirements of BPC section 3501(f)(1) that supervision shall not
325 be construed to require the physical presence of the physician and surgeon but does
326 require adherence to adequate supervision as agreed in the practice agreement the
327 physician and surgeon being available by telephone or other electronic
328 communication method at the time the PA examines the patient. The Board is only
329 authorized to limit PA practice under the authority in BPC section 3501(f)(2) which
330 states nothing in subdivision shall be construed as prohibiting the Board from
331 requiring the physical presence of a physician and surgeon as a term or condition of
332 a PA's reinstatement, probation, or imposing discipline.

333
334 The second argument suggested in response to the comment is that the Board is not
335 authorized to rewrite the statute and there is some legal authority for that argument
336 and the legislative history which is detailed in Attachment 4 supports the Board's
337 interpretation. In page 7 and 8 of the Committee analysis, it describes the history of
338 the Board's concerns with prior versions of SB 697. While the bill was going through
339 the Legislature with the language discussed, the Board launched an "oppose unless
340 amended" position seeking an amendment to the definition of supervision to allow
341 for the physical presence of a physician arguing the language "shall not be
342 construed" prevents this Board and the MBC from disciplining a licensee when
343 patient harm resulted from a practice agreement that did not require physical
344 presence. The striking of the language limiting regulations is another issue, but the
345 other issue was this Board at the time requested reauthorization of the board to
346 establish regulations that limit the services a PA may perform. In looking at what
347 eventually was enacted by SB 697, the Board got some of those opposition
348 arguments addressed and some not. The part that was not addressed was to allow
349 the Board to specify limitations on practice. The Legislature did acknowledge the
350 Board's right to discipline and take action relating to failures in supervision relating to
351 specific cases and the MBC and the PA board still have that authority. And so, again
352 for the reasons set forth in the memorandum, that comment recommendation was
353 rejected.

354 The third comment objects to the deletion of CCR section 1399.545(b), which
355 requires a practice agreement to establish procedures for the immediate care of
356 patients in need of emergency care beyond the PA's training and competency. The
357 recommendation would be to reject that comment as well, because of the arguments
358 that the Board previously discussed and that the Board can no longer generally limit
359 the services the PA can provide in a practice agreement except in those instances
360 specified in BPC section 3501(f)(2). SB 697 has changed the law so that such
361 determinations are generally determined at the practice level between the PAs and
362 the supervising physicians in accordance with BPC section 3502. The action
363 requested if the Board agrees with that approach would be motion A. If the Board
364 agrees, it should direct staff to proceed as recommended to reject the CMA
365 comments as specified and accept CAPA's letter of support and provide the
366 responses to the comments as indicated in the staff recommended responses.
367

368 Mr. Armenta disagreed with this because BPC section 3510 gives the Board the
369 authority to implement regulations, to carry out the purposes of Article 3. Mr.
370 Armenta does not see anything that limits the Board's ability to require immediate
371 availability which is different than presence. CMA's proposal states the Board do not
372 require immediate availability but simply places the onus on the physician to take the
373 additional step of written documentation that the PA is qualified. Mr. Armenta
374 believes this is a fair compromise as it is presumably already being done and fulfills
375 the Board's goal of protecting the public.
376

377 Dr. Kidd disagreed with Mr. Armenta's statements because he believes that this
378 needs to be determined at the practice level as there are already checks and
379 balances in place regardless of where the practice is. Dr. Kidd does not believe the
380 Board needs to be prescriptive nor arbitrate the practices that are put in the practice
381 agreement. Dr. Kidd agrees with Ms. Schieldge's recommendation and interpretation
382 of SB 697. Dr. Kidd recommends that motion option A should be adopted by the
383 Board. Dr. Kidd reminded the Board that the Board has two months to get this
384 package through to the Office of Administrative Law (OAL), otherwise it would be
385 delayed.
386

387 Mr. Armenta stated he does not think it is improper for the Board to seek to protect
388 the public and what CMA is proposing is not very onerous and is something
389 presumably already being done. The delay is due to CAPA changing their position
390 from the position they took a year ago.
391

392 Ms. Schieldge added the regulations that the Board is currently operating under are
393 ones that the Board inherited from the MBC who has authority to supervise
394 physicians. Historically, this Board was a committee of the MBC, and so the
395 standards that are set for physicians and how to supervise were set by the MBC.
396 Once the separation occurred from MBC and this Board became independent and
397 had its own rulemaking authority, the Board lost that kind of ability to set supervision
398 standards for physicians. The Board had that remaining regulation authority that
399 allowed the Board to set "alternative mechanisms for supervision" in concert with
400 MBC, but the Legislature struck that authority with enactment of SB 697. Ms.
401 Schieldge's concern is that the OAL, regardless of what CAPA may or may not have
402 agreed to, would look at it neutrally and objectively and say, where is the Board's
403 authority to set standards for physicians and to require physicians to review
404 documentation which indicates the PA is trained and qualified to perform the surgical
405 procedures under anesthesia or sedation. Ms. Schieldge's concern is those

406 legislative changes fundamentally alter the way the regulations are adopted for this
407 Board. And if not, what was the purpose of SB 697 other than to just change the title
408 of delegation of services agreement to practice agreement?
409 Dr. Kidd agreed with Ms. Schieldge and stated that due diligence is done by
410 credentialing and privileging committees. This is not needed in the regulatory
411 package because there are checks and balances at the hospital and systems level.
412 Most of the hospitals are joint commission accredited institutions and there are
413 specific parameters and requirements for fact checking to ensure that the providers
414 that are coming into the institution are competent to practice medicine and
415 participate in the operating room. Dr. Kidd stated that the Board does not need to be
416 duplicative by putting extra language into the regulatory package that already exists
417 at the system's level.

418
419 Mr. Armenta stated that he is not asking to supervise or tell physicians what to do,
420 but rather that the practice agreement must include verbiage that says the physician
421 has reviewed the writings. If that is not possible through regulations, Mr. Armenta
422 wants to make sure as a member of the public, that the supervising physician has
423 reviewed the credentials of the PA. The statute is not clearly drafted, and statutes
424 are not clear, which is why there are courts to interpret statutes. Mr. Armenta stated
425 he would like to make a motion to include the language of the CMA letter and hopes
426 somebody would second that motion.

427
428 Dr. Kidd stated it is not just the physician reviewing the credentials, but the
429 healthcare system or the hospital system reviewing the credentials on top of what
430 the physician is reviewing. There is already a robust structure in place that does due
431 diligence of looking at applications and ensuring that the providers that come into
432 healthcare facilities are competent, have the necessary training and skills to be in
433 the operating room theater, as a first assist at the bedside or playing some other role
434 in the operating room. There is no evidence that supports putting this language in
435 regulation is going to protect the public any better than what currently exists.
436 Ms. Snow agreed with Mr. Armenta's position.

437
438 Dr. Hawkins asked whether the patient informed consent agreement included
439 information that surgery care is being provided by a specific physician and specific
440 PA.

441
442 Dr. Kidd responded the informed consent is with the operating surgeon, and explains
443 the risks, benefits, and alternatives of the procedures, and they may also explain
444 that a PA, a resident, or a fellow is involved in the case. Dr. Kidd motioned for option
445 A.

446
447 M/ Vasco Deon Kidd S/ Diego Inzunza to:

448
449 Direct staff to proceed as recommended to reject the CMA comments as specified
450 and accept CAPA's letter of support and provide the responses to the comments as
451 indicated in the staff recommended responses.

452
453 Public comment:

454 Lucas Evensen, Associate Director, Strategic Engagement of the California Medical
455 Association (CMA), speaking on behalf of CMA, stated CMA continues to request
456 the language in their letter be adopted and reject the recommendation by Board
457 staff. CMA maintains their language is within the Board's authority and their

458 proposals also align with the Board's original intent when promulgating these
 459 regulations to place additional parameters around PAs performing surgical
 460 procedures without a physician present.
 461 No further comments were received, and the motion passed as follows:
 462

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			

463
 464 **B. Consideration of Adoption of Amendments to CCR, Title 16, Sections 1399.502,**
 465 **1399.540, 1399.541, and 1399.545 to Finalize the Current Rulemaking**
 466

467 Ms. Schiedge stated if the Board rejects the previously discussed comments and
 468 accepts CAPA's comments and makes no further changes to the proposed text, staff
 469 recommends the Board consider the "Option A" motion as set forth on page 9 of the
 470 meeting materials to complete the rulemaking process and adopt the proposed text
 471 as set forth in Attachment 1 of the meeting materials: Direct staff to take all steps
 472 necessary to complete the rulemaking process including the filing of the final
 473 rulemaking package with the Office of Administrative Law, authorize the Executive
 474 Officer to make any non-substantive changes to the proposed regulations and the
 475 rulemaking documents, and adopt the amendments to 16 CCR sections 1399.502,
 476 1399.540, 1399.541, and 1399.545 as noticed in the Second Modified Text in
 477 Attachment 1. If the Board disagrees or has further changes to the text, please
 478 consider motion "Option B."
 479

480 M/ Vasco Deon Kidd S/ Juan Armenta to:

481
 482 Direct staff to take all steps necessary to complete the rulemaking process including
 483 the filing of the final rulemaking package with the Office of Administrative Law,
 484 authorize the Executive Officer to make any non-substantive changes to the
 485 proposed regulations and the rulemaking documents, and adopt the amendments to
 486 16 CCR sections 1399.502, 1399.540, 1399.541, and 1399.545, as noticed in the
 487 Second Modified Text in Attachment 1.
 488

489 No public comment.

490
 491 No further comments were received, and the motion passed as follows:

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				

493 C. Consideration of Proposal to Authorize Initiation of a New Rulemaking to Amend
494 CCR, Title 16, Sections 1399.502, 1399.540, 1399.541, and 1399.545
495

496 Ms. Schiedge stated that under Government Code section 11346.4(b), the Board
497 has one year from the date of the publication of the notice of proposed regulatory
498 action to complete the rulemaking process. If the Board fails to meet this deadline,
499 the Board must start over with a new filing if it would like to adopt regulations on this
500 subject. The Board began the rulemaking process to implement SB 697 on July 28,
501 2023, and has until Friday, July 26, 2024, to complete the rulemaking with the text
502 approved above in Agenda Item 11.B. By law, the Board's rulemaking file must be
503 approved by the Director of the Department and the Business, Consumer Services
504 and Housing Agency before it can be filed with the OAL. In addition, the OAL has 30
505 working days to complete its review of the Board's rulemaking file and proposed text
506 (Gov. Code, § 11349.3).
507

508 In the unfortunate event that the Board runs out of time, staff are requesting that the
509 Board authorize the Executive Officer to start the process over with the text in
510 Attachment 5, which matches the text approved in Attachment 1 in the format
511 required for beginning the rulemaking process.
512

513 If the Board has no changes to the Second Modified Text notice discussed in Item
514 11.B., staff request the Board move option A.
515

516 M/ Sonya Earley S/ Diego Inzunza to:
517

518 In the event that the Board is unable to complete the prior rulemaking implementing
519 SB 697 in the time allotted by Government Code section 11346.4(b), approve the
520 proposed regulatory text in Attachment 5, direct staff to submit the text to the
521 Director of the Department of Consumer Affairs and the Business, Consumer
522 Services, and Housing Agency for review. If the Board does not receive any
523 objections or adverse recommendations specifically directed at the proposed action
524 or to the procedures followed by the Board in proposing or adopting this action,
525 authorize the Executive Officer to take all steps necessary to initiate the rulemaking
526 process, make any non-substantive changes to the package, and set the matter for
527 a hearing if requested. If no objections or adverse recommendations are received
528 during the 45-day comment period and no hearing is requested, authorize the
529 Executive Officer to take all steps necessary to complete the rulemaking and adopt
530 the proposed regulations at 16 CCR sections 1399.502, 1399.540, 1399.541, and
531 1399.545, as noticed.
532

533 No public comment.
534

535 No further comments were received, and the motion passed as follows:

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				

536 Motion to Reconsider Item 11.B.

537
538 Mr. Armenta made a motion to reconsider the motion passed in Item 11.B. Ms. Snow
539 seconded that motion. Mr. Armenta clarified he was suggesting that the practice
540 agreement states the documentation is there, which is already done in practice, but
541 this adds a level of protection in his opinion. Dr. Kidd reiterated this would be
542 duplicative as there are already checks and balances in the healthcare system to
543 ensure providers are qualified to treat patients. Mr. Armenta questioned if this is
544 already being done, then what is the problem with simply putting it in writing. Mr.
545 Armenta further asks if it provides the public an additional measure of safety, then
546 why can't the Board add this into the text as part of the requirement.

547
548 Ms. Schieldge stated the Legislature repealed the regulations that allowed this
549 Board and the MBC to set alternative mechanisms for supervision and the legislative
550 history talks about the autonomy for providers to set standards by way of practice
551 agreement and the fact that SB 697 would change the Board's regulatory authority in
552 the legislative history. Ms. Schieldge indicated in the language, the Legislature
553 repealed this Board's and the MBC's regulatory authority to set alternative
554 mechanisms for supervision. The only thing that was restored was the ability of this
555 Board to require supervision, personal presence, physical presence, etc., in the
556 event that there is a reinstatement, probation, or discipline because of a failure in
557 supervision. This tracks the advanced nurse practitioner scope, which is what the
558 Committee analysis states SB 697 is intended to do.

559
560 Mr. Armenta stated that this does not require supervision. This simply says the
561 practice agreement has to assure that they have reviewed the credentials, and it
562 does not say supervision.

563
564 Ms. Schieldge asked where it says in BPC sections 3501 or 3502 that the Board has
565 the authority to require them to comply with its regulations on supervision as a
566 condition of the PA performing that service.

567
568 Mr. Armenta stated in BPC section 3510 it says the Board has the authority to write
569 any regulation that implements the intent of this article.

570
571 Ms. Schieldge stated the intent of the article was to allow the physician assistant to
572 perform, notwithstanding any other law, any service agreed to in a practice
573 agreement under certain criteria, which are not set by this Board but by the
574 Legislature and in the practice agreement. There is nothing in that list that says that
575 a physician "must comply with the Board's regulations." She advised that the Board
576 cannot create a regulation that is in conflict with the express purpose of the statute
577 and the requirements the Legislature set in enacting SB 697. In this case, it appears
578 that when the Legislature made a policy decision to alter the Board's rulemaking
579 authority in this area, the Legislature believed that there was enough public
580 protection built into the system so that physicians and physician assistants could
581 create practice agreements and set those standards themselves because there is
582 enough public protection checks in the system. In her opinion, these changes are
583 similar to other supervision with other practitioners in the department. She indicated
584 that this Board had a unique authority to set supervision standards, but that authority
585 was removed to apparently address concerns that were raised about adequate care
586 in the State of California. According to the legislative history behind this bill, the
587 Legislature removed that authority to allow for more growth in the area and, as CMA

588 admits in support of this bill, the current regulatory structure was, in their view
589 burdensome. CMA indicated in its support of SB 697 that it was easier to work with
590 nurses than PAs, and so the legislative history indicates that these legislative
591 changes were modeled after changes they had made in the Nursing Practice Act.
592 CAPA made the argument that the Board's prior regulations inhibited their
593 profession's growth and autonomy in working with physicians and it appears that the
594 Legislature accepted that argument in enacting SB 697.

595
596 Mr. Armenta agrees that CAPA first agreed with the "immediate availability"
597 definition. "Immediate availability" is different than "physical presence", and the
598 statute is ambiguous in this respect. Further, Mr. Armenta did not feel that asking for
599 a physician to review documentation or the credentials of a PA prior to practice was
600 too burdensome, particularly if it is already being done in practice.

601
602 Mr. Kanotz asked the Board to consider that the requirements of the practice
603 agreement listed in BPC section 3502.3, state, in part:

604
605 (a) (1) A practice agreement shall include provisions that address the
606 following:

607
608 (A) The types of medical services a physician assistant is authorized to
609 perform.

610
611 Therefore, he indicated that if the practice agreement includes performing
612 anesthesia and it is authorized by a physician, any competent physician is going to
613 be checking the qualifications of a PA prior to authorizing practice. As a result, he
614 expressed the opinion that the qualifications issue is already covered by BPC
615 section 3502.3.

616
617 M/ Juan Armenta S/ Deborah Snow to:

618
619 Reconsider the prior motion and action taken in Agenda Item 11.B.

620
621 No public comment.

622
623 Mr. Kanotz explained the options for voting on this motion to the members and that if
624 the motion passed, the Board would be reconsidering Item 11.B. If the motion failed,
625 the prior motion would not be reconsidered, and the prior action would stand.

626
627 Ms. Snow stated she agreed with Mr. Armenta's concerns but has decided to defer
628 to Counsel's advice that it is covered.

629
630 Mr. Armenta disagreed with Counsel's interpretation and indicated that he believed
631 that subdivision (a)(1)(B) of BPC section 3502.3 authorizes the Board to further
632 clarify the meaning of "adequate supervision" of the PA, "including, but not limited to,
633 appropriate communication, availability, consultations, and referrals between a
634 physician and surgeon and the physician assistant in the provision of medical
635 services."

636
637 Dr. Alexander requested input from the Board's physician member, Dr. Hawkins,
638 about these issues. Dr. Hawkins stated it appears that there is adequate protection
639 but that does not mean that a member of the public may not have concerns. Dr.

640 Hawkins asked whether the Board is discussing PA’s functioning as
 641 anesthesiologists or PA functioning as a surgeon during the procedure, so if it’s the
 642 latter, there is an anesthesiologist or nurse anesthetist who is watching what is going
 643 on with the patient. We know that a patient has already agreed to the PA’s
 644 involvement or consented to the procedure, and we know there are various degrees
 645 of due diligence when patients review what they sign. Dr. Hawkins emphasized the
 646 importance of having a patient advocate, so patients know and understand what
 647 they sign. Ultimately, however, he agrees that the language would be duplicative
 648 but understands the concerns with transparency and with patients being fully
 649 informed.

650
 651 The motion for reconsideration failed as follows:

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			

652
 653 **12. Regulations – Update on Pending Regulatory Packages**

654
 655 Ms. Dhillon referred members to Agenda Item 12 for the detailed updates on the
 656 following packages.

657
 658 1. 16 CCR 1399.514, 1399.615 – SB 697: License Renewal and Continuing Medical
 659 Education Required

660
 661 Staff is currently working on the initial documents with Regulations Counsel and the
 662 Budget Office to submit for review.

663
 664 2. 16 CCR 1399.502, 1399.540, 1399.541, 1399.545 – SB 697: SB 697
 665 Implementation

666
 667 Staff and Regulations Counsel recommend the Board approve the following
 668 proposed responses to comments.

669
 670 3. 16 CCR 1399.506, 1399.507, 1399.511, 1399.546 – SB 697: Application, Exam
 671 Scores, Addresses, & Recordkeeping

672
 673 Staff is currently finalizing initial documents with Regulations Counsel and the
 674 Budget Office to submit for initial review in June 2024.

675
 676 4. 16 CCR 1399.515 – AB 2461: Retired Status to Include Fingerprint Requirement

677
 678 Staff will begin working on initial documents to submit for initial review this calendar
 679 year.

680
 681 5. 16 CCR 1399.523 – SB 1441: Implement Uniform Standards Related to
 682 Substance Abusing Licensees and Update of Disciplinary Guidelines.

683 Staff is working on the proposed language for Board approval in the next few
684 months.

685
686 No public comment.

687
688 **13. Discussion Regarding Physician Assistant Supervision Ratio**
689 **Requirements**

690
691 Dr. Kidd referred to BPC section 3516, subdivision (b), stating since 2008, a
692 physician and surgeon shall not supervise more than four physician assistants at
693 any one time. During the COVID-19 pandemic, the Director of DCA suspended this
694 requirement from March 30, 2020, through February 28, 2023, to improve access to
695 the healthcare system. Currently, 20 states have no PA supervision ratio
696 requirement, 45% of the 29 states that do have ratio requirements have increased
697 their ratio requirement. Florida and Washington have increased their ratio
698 requirement from one-to-four (1:4) to one-to-ten (1:10). There is no specific guidance
699 or best practices regarding PA supervision ratios in the peer review published
700 literature; there is no study that indicates the value of legislative PA ratios and
701 improving clinical outcomes or quality of care; and there are no studies that
702 indicating that removing ratio requirement negatively impacts physician practice or
703 patient care.

704
705 Dr. Kidd reported that California needs 8,000 primary care providers between 2025
706 and 2030 (Healthforce Center at UCSF) and is only meeting 50% of primary care
707 needs (Kaiser Family Foundation). It is estimated that up to 75% of primary care
708 services could be provided by nurse practitioners (NPs) and PAs (California Future
709 Healthcare Workforce Commission). Additionally, a large component of physicians
710 will reach retirement age in the next decade and there will not be enough medical
711 graduates to backfill those positions. Dr. Kidd asked, with the shortage of healthcare
712 providers in California and across the states and the inability to meet the healthcare
713 obligations, how does maintaining the one-to-four ratio improve access to primary
714 care services? And why shouldn't physicians be allowed to determine the number of
715 PAs they can adequately supervise at the practice level like they can in 20 other
716 states?

717
718 Dr. Hawkins stated one of the reasons why there is a potential problem with
719 supervising physicians determining the ratios at the practice level is the motivation of
720 the practice, as the practice can be more focused on the financials than providing
721 quality of care. Dr. Hawkins stated he would like more data on discipline and what
722 types of practice are those with the 20 states with no supervision ratio requirement,
723 and whether new graduates are going into primary care or sub-specialties.

724
725 Dr. Kidd stated that there is no evidence in the review that substantiates that
726 physicians are not qualified to supervise. The states that have no ratio requirements
727 have not reinstated their requirement and that speaks volume on disciplinary
728 concerns. In 2008, there were 10 states that had no ratio requirements, in 2017 a
729 total of 12 and in 2024 a total of 20 states. Some states have not had ratio
730 requirements for over two decades. California had three years of no ratio
731 requirements and for three years with no complaints from the public. NPs are
732 practicing independently with no supervision.

733

734 Dr. Hawkins stated since there is no data at this time, there should not be an
735 assumption that there is no problem with the no-limit supervised PAs or dismiss that
736 there are motivations beyond quality of care.

737
738 Dr. Kidd stated California should leverage available resources for the betterment of
739 patient care and increase access. The state is only meeting 50% of the healthcare
740 obligations that leads to worsening outcomes, mortality issues, and prenatal issues.

741
742 Ms. Snow stated that she would like to see the increase but would like for discipline
743 data in other states to follow.

744
745 Mr. Armenta stated the legislative intent is clear and when the statute was amended
746 in 2023, the Legislature intended to keep the ratio to one-to-four.

747
748 Dr. Alexander stated data will be helpful and there's no guarantee that PAs will go
749 into primary care to address the access to care issue. He also questioned the
750 motivation behind the other states for changing the ratio requirements.

751
752 Mr. Armenta stated it would be a burden to staff and the Board's budget to gather
753 the empirical data needed.

754
755 Dr. Kidd suggested revisiting this issue with the Legislature during the Sunset
756 process.

757
758 Mr. Armenta stated he sees a big risk as the Legislature may see this as intruding
759 onto legislative intent.

760
761 Dr. Earley stated that PAs were created out of a manpower shortage and after 60
762 years, there is still an access to care issue and a manpower issue.

763
764 No public comment.

765
766 **14. Education/Workforce Development Advisory Committee: Update on**
767 **Physician Assistant Education Programs and Applicants in California**

768
769 Dr. Alexander referred members to Agenda Item 14 for the detailed Education and
770 Workforce Sub-Committee Report.

771
772 Dr. Kidd reported that the University of La Verne has withdrawn accreditation. They
773 had enrolled 24 students per cohort but will close their program. Second year
774 students that have completed clinical rotations will be eligible for the Physician
775 Assistant National Certification Exam (PANCE); however, first year students will
776 have to find other programs in order to complete their PA training. University of La
777 Verne is a largely Hispanic institution and will have further deficit in a number of PAs
778 graduating. Programs are having trouble meeting and complying with the
779 accreditation standards, specifically clinical site acquisition and ensuring that they
780 have a number of qualified providers to help train PAs; and the self-study report and
781 the program's ability to demonstrate that they can conduct an ongoing self-
782 assessment.

783
784 Dr. Alexander asked whether those second-year students will have a disadvantage
785 of passing the PANCE due to the program's two major deficiencies.

786 Dr. Kidd said the PANCE pass rate does not indicate if the program is meeting the
787 ARC-PA accreditation requirements. Dr. Kidd stated he has seen students do
788 extremely well on the PANCE, but the program still suffers with meeting and
789 complying with accreditation standards.
790 No public comment.

791
792 **15. Report by the Legislative Specialist; Legislative Update**

793
794 Ms. Dhillon referred members to Agenda Item 15 for the detailed report on the
795 following bills.

796
797 A. AB 2194 (Patterson) Physician assistants: supervision: doctors of podiatric
798 medicine

799
800 This bill was amended on April 24, 2024. The Board would need to provide an
801 update of the supervising requirements on the Board’s website for licensee. This is
802 something that can be done by staff and is supported by the Board’s current pro rata
803 costs to DCA. At its March 4, 2024, meeting, the Board took an oppose position.

804
805 Dr. Kidd stated if the specific patient protocol is removed then the PA may interpret
806 that the Podiatrist can now be their supervising physician. That requirement needs to
807 be embedded so that PAs understand that their supervising physician is either an
808 allopathic or osteopathic physician. This may cause confusion and for this reason
809 Dr. Kidd remain opposed to this legislation.

810
811 Dr. Earley agreed with Dr. Kidd.

812
813 B. AB 2270 (Maienschein) Healing arts: continuing education; menopausal mental or
814 physical health

815
816 Staff does not anticipate any fiscal impact with this bill.

817
818 Dr. Kidd stated that there are continuing medical education courses that PAs can
819 take to meet their licensing requirements, so this legislation is unnecessary.

820
821 Dr. Hawkins stated MBC did not see this to be beneficial.

822
823 M/ Juan Armenta S/ Vasco Deon Kidd to:

824
825 Oppose this bill.

826

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				

827
828 C. AB 2442 (Zbur) Healing arts: expedited licensure process: gender-affirming
829 health care and gender-affirming mental health care

830 This would require the license application form to be updated for applicants to
831 demonstrate their intent. Staff projects there will not be an increase in licensing
832 workload related to the new provisions of this bill.
833 Dr. Kidd stated that there are no issues with the turnaround time with application
834 processing and thanked staff for their work.
835

836 Ms. Schieldge stated that when there is an expedite requirement, it must be on the
837 application and will need rulemaking to support it so there will be a workload
838 associated with it.
839

840 M/ Vasco Deon Kidd S/ Juan Armenta to:

841
842 Oppose this bill.
843

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				

844
845 No public comment.
846

847 D. AB 2581 (Maienschein) Healing arts: continuing education: maternal mental
848 health

849
850 Staff does not anticipate any fiscal impact with this bill.
851

852 M/ Vasco Deon Kidd S/ Juan Armenta to:

853
854 Oppose this bill.
855

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				

856
857 No public comment.
858

859 E. AB 2862 (Gipson) Department of Consumer Affairs: African American applicants
860

861 This would require the license application form to be updated for applicants to
862 demonstrate they qualify. Staff projects there will not be an increase in licensing
863 workload related to the new provisions of this bill.
864

865 Dr. Hawkins stated he understands the potential motivation for this, but both the
866 MBC and the Board are doing well with their licensing and does not see the
867 advantage of this.

868
869 Ms. Schieldge stated that it is difficult to determine who is descended from an
870 African American slave other than self-certification.

871
872 Mr. Kanotz stated that the bill would not require that proof because the board would
873 prioritize African American applicants seeking license, especially applicants.

874
875 M/ Juan Armenta S/ Vasco Deon Kidd to:

876
877 Oppose this bill.

878

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				

879
880 No public comment.

881
882 F. AB 3127 (McKinnor) Reporting of crimes: mandate reporters

883
884 The Board would need to provide an update of mandated reporting information
885 included on the Board's website for licensees. This is something that can be done by
886 staff and is supported by the Board's current pro rata costs to DCA.

887
888 Ms. Snow questioned what the rationale is for this bill. Ms. Dhillon stated that the
889 rationale is so that victims can be provided with brief counseling and domestic or
890 sexual violence referrals to better assist the victim.

891
892 Dr. Hawkins stated the first half of the bill is problematic, but the latter half is very
893 important.

894
895 Mr. Armenta stated the duty to report already exists but would add an additional
896 requirement to the practitioner. This also infringes on the patient-physician and
897 patient-psychotherapist privileges, which is encouraged. Patients should be able to
898 talk to their physician or psychotherapist without fear that it will be automatically
899 reported.

900
901 M/ Juan Armenta S/ Diego Inzunza to:

902
903 Oppose this bill.

904

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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938

No public comment.

G. SB 1041 (Portantino) Physician assistants: licensure: Armenian medical graduate physician assistants

This bill was amended on April 8, 2024. This would require the license application form to be updated for applicants to apply for the training program. This bill would also require the Board to establish a Training Program Advisory Task Force. However, until funding is secured from nonprofit philanthropic entities, the Board will not be able to establish the task force to implement the program. Therefore, it is difficult to determine the fiscal impact, if any, the Board can anticipate. At its March 4, 2024, meeting, the Board took an oppose position on this bill.

Dr. Earley stated the Board will continue with this opposition.

Mr. Kanotz stated this bill had a hearing on May 16, 2024, with the Assembly Appropriations Committee but did not pass out of the Committee and missed the Appropriation’s deadline.

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

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 there is no need for expedited process because of the Board’s turnaround timeframe.

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				

939
940
941
942
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944
945

No public comment.

16. Agenda Items for Next Meeting

- 1) Include discussions on supervision ratio.

946 No public comment.

947

948 **17. CLOSED SESSION**

949

950 None this meeting.

951

952 **18. Adjournment**

953

954 With no further business the meeting was adjourned at 11:38 a.m.

955

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

958

DRAFT