

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				

4. Public Comment on Items Not on the Agenda

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

No public comment.

5. President's Report

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

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

No public comment.

6. Executive Officer's Report

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

A. Personnel

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

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

B. 2025 Sunset Review Process Overview

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

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

No public comment.

7. Board Activity Reports

A. Licensing

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

Dr. 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.

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

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

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

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

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

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

No public comment.

9. Budget Update

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

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

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

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

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

No public comment.

10. Report on Medical Board of California Activities

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

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

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

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

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

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

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

No public comment.

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

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

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

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

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

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

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

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

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

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

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

legislative changes fundamentally alter the way the regulations are adopted for this Board. And if not, what was the purpose of SB 697 other than to just change the title of delegation of services agreement to practice agreement?

Dr. Kidd agreed with Ms. Schieldge and stated that due diligence is done by credentialing and privileging committees. This is not needed in the regulatory package because there are checks and balances at the hospital and systems level. Most of the hospitals are joint commission accredited institutions and there are specific parameters and requirements for fact checking to ensure that the providers that are coming into the institution are competent to practice medicine and participate in the operating room. Dr. Kidd stated that the Board does not need to be duplicative by putting extra language into the regulatory package that already exists at the system's level.

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

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

Ms. Snow agreed with Mr. Armenta's position.

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

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

M/ Vasco Deon Kidd S/ Diego Inzunza to:

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

Public comment:

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

proposals also align with the Board's original intent when promulgating these regulations to place additional parameters around PAs performing surgical procedures without a physician present.

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			

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

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

M/ Vasco Deon Kidd S/ Juan Armenta to:

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

No public comment.

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				

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

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

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

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

M/ Sonya Earley S/ Diego Inzunza to:

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

No public comment.

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				

Motion to Reconsider Item 11.B.

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

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

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

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

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

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

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

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

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

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

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

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

M/ Juan Armenta S/ Deborah Snow to:

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

No public comment.

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

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

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

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

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

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			

12. Regulations – Update on Pending Regulatory Packages

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

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

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

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

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

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

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

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

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

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

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

No public comment.

13. Discussion Regarding Physician Assistant Supervision Ratio Requirements

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

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

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

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

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

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

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

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

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

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

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

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

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

No public comment.

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

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

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

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

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

15. Report by the Legislative Specialist; Legislative Update

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

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

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

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

Dr. Earley agreed with Dr. Kidd.

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

Staff does not anticipate any fiscal impact with this bill.

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

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

M/ Juan Armenta S/ Vasco Deon Kidd 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				

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

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 there are no issues with the turnaround time with application processing and thanked staff for their work.

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

M/ Vasco Deon Kidd S/ Juan Armenta to:

Oppose this bill.

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

No public comment.

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

Staff does not anticipate any fiscal impact with this bill.

M/ Vasco Deon Kidd S/ Juan Armenta to:

Oppose this bill.

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

No public comment.

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

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

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

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

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

M/ Juan Armenta S/ Vasco Deon Kidd to:

Oppose this bill.

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

No public comment.

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

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

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

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

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

M/ Juan Armenta S/ Diego Inzunza to:

Oppose this bill.

Member	Yes	No	Abstain	Absent	Recusal
Charles Alexander	X				
Juan Armenta	X				
Sonya Earley	X				

Diego Inzunza	X				
Vasco Deon Kidd	X				
Deborah Snow	X				

No public comment.

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				

No public comment.

16. Agenda Items for Next Meeting

- 1) Include discussions on supervision ratio.

No public comment.

17. CLOSED SESSION

None this meeting.

18. Adjournment

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

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