



## BOARD MEETING MINUTES

Thursday, May 17, 2018

**BOARD MEMBERS PRESENT:** Joseph Zammuto, D.O., President  
James Lally, D.O., Vice-President  
Cyrus Buhari, D.O., Secretary/ Treasurer  
Claudia Mercado, Board Member  
Cheryl Williams, Board Member  
Megan Blair, Board Member  
Elizabeth Jensen, D.O., Board Member

**STAFF PRESENT:** Angelina Burton, Executive Director  
Terri Thorfinnson, Asst. Executive Director  
Sabina Knight, Esq., Legal Counsel, DCA  
Machiko Chong, Executive Analyst  
Corey Sparks, Lead Enforcement Analyst

**BOARD MEMBERS ABSENT:** Andrew Moreno, Board Member

The Board meeting of the Osteopathic Medical Board of California (OMBC) was called to order by President, Joseph Zammuto, D.O. at 10: 04 a.m. at Chino Valley Medical Center 5451 Walnut Ave., Conference Room, Chino CA 91710.

### 1. Roll Call

Mrs. Chong called roll and Dr. Zammuto determined that a quorum was present.

### 2. Public Comment for Items Not on the Agenda

No Public Comment was received by the Board.

### 3. Review and Approval of Minutes

Dr. Zammuto called for a motion regarding approval of the Board Meeting minutes of January 18, 2018.

- **Motion to approve the January 18, 2018 Board meeting minutes with no corrections. Motion** – Dr. Lally **Second** – Dr. Buhari
- Roll Call Vote was taken
  - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – Dr. Jensen, Mr. Moreno

Motion carried to approve minutes with no corrections.

### 4. Title 16 California Code of Regulations: Update, Discussion, and Possible Action

#### Discussion Section 1610.5 – Initial License Fee Schedule

Mrs. Thorfinnson provided the Board with background information regarding the Initial License Fee Schedule regulation packet.

Mrs. Thorfinnson noted that the Board had already approved the proposed regulatory language in its prior form, however she stated that there was a great chance that it could not be implemented in BreEZe as written. Therefore, it was being brought back to the Board for approval as presented.

The packet addresses the licensing prorated charges associated with the initial licensing process, which the Board would like to launch on the BreEZe system. The Board staff eliminated the even/odd year rule associated with the birth month of applicants and chose to implement and utilize a rule that was already in use on the BreEZe database by other boards, bureaus, and committees. Previously, the even/odd birth month usage was implemented to assist with equal work distribution throughout the Board, however the new fee schedule presented in addition to the audit system previously recommended will ensure that the workload of analysts continues to be evenly distributed throughout the Board for timely processing.

Dr. Lally inquired if the intent of the regulatory packet was to lessen the workload for the staff and was informed by Mrs. Burton that the reason for the regulatory packet was due to BreEZe's inability to accommodate the even/odd algorithm that had been previously used by the Board. Mrs. Thorfinnson added that this change would also be a benefit not only to the Board but also to the applicants because they would not only be able to

enter their own information into the database, minimizing the amount of errors incurred during the data entry process, but also have the ability to pay for the prorated licensing fee via credit card which would be calculated utilizing the new algorithm.

**Motion to approve the proposed modified text for a 45-day public comment period, and if there are no adverse comments received during the commenting period delegate to the executive director the authority to adopt the proposed regulatory changes as modified and complete the rule making file including making any technical or non-substantive changes. Motion – Dr. Lally, Second – Ms. Mercado**

- Roll Call Vote was taken
  - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – Dr. Jensen, Mr. Moreno
- Motion carried to accept changes as presented.

### **Discussion Section 1659.31 – Citable Offenses**

Mrs. Thorfinnson provided the Board with background information regarding the Citable Offenses regulation packet and briefly discussed the citations being amended within the packet. She also provided the Board examples of citable offenses reported to the Board and directed the Board to their correlating offense section.

Dr. Zammuto inquired about the fines accompanying the citations being added and asked who is responsible for setting the amount. He was informed by Mrs. Thorfinnson that the Executive Director was responsible for issuing the citation amount as long as it falls within the maximum and/or minimum amounts provided in statute.

Dr. Lally inquired about BPC Section 2457.5 and who determined the unconscionable amount. He was informed by Mrs. Thorfinnson that the Executive Director may do some research to figure out what the “normal fee” is for the specific service to make further determinations on whether the fee is in fact unconscionable.

Kathleen S. Creason, Executive Director, Osteopathic Physicians & Surgeons of California (OPSC), inquired about BPC Section 2052 noting that it seemed rather odd that the section might only be a citable offense as opposed to being considered a more serious infraction. Mrs. Thorfinnson noted that if the Board felt that the section should be removed because they felt that was too egregious of an offense to be considered just a citable offense, they could opt to make it a disciplinary matter as it is still a statutory violation.

Dr. Buhari inquired if the addition of the citable offenses would cause an increase in workload in the office and was advised that it would. However, it would only really increase in terms of the drafting of the citations issued in office by the Board's enforcement staff. Also, it would cut down on investigation costs as the offenses would now be established and issued by the Board's enforcement staff in the office.

Mrs. Thorfinnson asked Ms. Knight for clarification regarding removal of section 2052 and how it would correlate with the disciplinary guidelines as the board felt that it should be a disciplinary matter as opposed to a citable offense. Ms. Knight stated that she would conduct additional review of BPC Section and provide the Board with an answer regarding the final outcome of the section's removal and/or implementation as a disciplinary matter.

**Motion to approve the proposed modified text for a 45-day public comment period, and if there are no adverse comments received during the commenting period delegate to the executive director the authority to adopt the proposed regulatory changes as modified and complete the rule making file including making any technical or non-substantive changes. Motion – Dr. Lally, Second – Mrs. Williams**

- Roll Call Vote was taken
  - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Jensen, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – Mr. Moreno
- Motion carried to accept changes as presented subject to legal counsel review regarding removal of Section 2052 or whether it should stay a citable offense.

### **Discussion Section 1663 – Disciplinary Guidelines**

Mrs. Thorfinnson provided the Board with background information regarding the Disciplinary Guidelines regulation packet.

It was noted that the Uniform Standards Regarding Substance Abusing Licensees and all references made to the uniform standards were removed from the Disciplinary Guidelines as there would be future amendments made to the language. Therefore, the Board opted to remove the uniform standards and move forward with submitting the proposed Disciplinary Guidelines language.

The actual Disciplinary Guidelines package remains the same as previously presented apart from the redacted uniform standards language. Additionally, the Board opted to add a separate section regarding sexual misconduct for ease of access which also

remains the same, however it is in its own section as opposed to being included in the Disciplinary Guidelines section.

Dr. Zammuto inquired whether there were any major and/or substantive changes made to the document and was advised by Mrs. Thorfinnson that it is in fact the same language. However, it is necessary for the Board to document all dialogue regarding each regulatory packet and approvals of all proposed language for documentation purposes of the regulation packet.

Ms. Knight noted that the Medical Board of California notes BPC Section 2052 in both their citable offenses and Disciplinary Guidelines however they have model Disciplinary Language and it is being used to describe the practice of medicine. Dr. Buhari asked if the Board could list BCP Section 2052 in both the Board's citable offenses and Disciplinary Guidelines and was advised that the initial motion for Section 1659.31 Citable Offenses should stand as is until further research can be done, and the Board should move forward with the proposed Disciplinary Guidelines language as is until further notice.

Dr. Lally wanted to clarify that the Board had the ability to make further amendments to the statutory language after adoptions are made and was advised that the Board would still have the ability to take action once the package moves forward, however this process is just ensuring that the approval process of the regulatory packet is able to commence.

**Motion to approve the proposed modified text for a 45-day public comment period, and if there are no adverse comments received during the commenting period delegate to the executive director the authority to adopt the proposed regulatory changes as modified and complete the rule making file including making any technical or non-substantive changes. Motion – Dr. Lally, Second – Dr. Jensen**

- Roll Call Vote was taken
  - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Jensen, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – Mr. Moreno
- Motion carried to accept changes as presented.

**5. SB 798 (Hill) Healing Arts: Boards - Kathleen S. Creason, Executive Director, Osteopathic Physicians & Surgeons of California (OPSC) - Update, Discussion, and Possible Action**

Mrs. Creason addressed the concerns that OPSC had with SB 798's implementation mandating that all licensees complete a minimum of three (3) years of training prior to issuance of an unrestricted license by the Board. The bill was introduced during OMBC's sunset review held in 2017, however its implementation date is not until 2020. Mrs. Creason also noted that in addition to the letter submitted to Senator Jerry Hill expressing OPSC concerns, OPSC has also been in discussions with Senate Business and Professions staff regarding the implications that this bill may have. In addition to the concerns addressed in the letter transmitted to Senator Hill OPSC also addressed the fact that there are a multitude of two-year training programs that do not offer a 3rd year to physicians as required, noting that the bill would not only affect those residency programs but would also affect those military personnel who will have completed only two of the three years required to obtain an unrestricted license. Representatives from OPSC recommended that the bill allow alternative pathways for licensees to obtain licensure if they were not able to provide proof of a 3-year program. Additionally, OPSC would like to ensure that there are no restrictions to patient outreach or patient care and ensure that if they are in a rural or underserved area that they are still able to obtain services while there.

Ms. Mercado asked if OPSC knew of the potential impacts implementation that the bill would have on the public in underserved and rural areas; and if representatives of the Senate have been receptive to OPSC's requests regarding data extraction, and was informed by Mrs. Creason that the Senate has been receptive and noted that they are actively looking for additional data and attempting to come to a resolution.

## **6. Pending Legislation: Discussion and Possible Action**

Mrs. Creason informed the board that OPSC established a physician opioid work group in response to the proposed legislation included in the pending legislation section regarding opioids to ensure that physicians are able to provide recommendations on ways to address the opioid epidemic in California. The goal of OPSC as an association is to ensure that they are able to give guidance and recommendations on actions that may be taken to appropriately address the opioid crisis to effectively handle the opioid issues.

### **AB 505: Physicians and Surgeons: Probation**

AB 505 would take away the Board's ability to enter into a stipulated settlement in an enforcement matter where the complaint alleges a felony conviction resulting in harm to patient safety; drug or alcohol abuse directly resulting in harm to patient safety or, sexual acts or sexual exploitation. There would be increased cost in enforcement because any case that involved any of the allegations would have to go to hearing instead of having the option to enter into a stipulated settlement agreement.

**Motion to oppose AB 505: Physicians and Surgeons: Probation.**  
**Motion – Dr. Lally, Second – Dr. Buhari**

- Roll Call Vote was taken
  - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Jensen, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – Mr. Moreno
- Motion carried to oppose AB 505: Physicians and Surgeons: Probation.

### **AB 1998: Opioids: Safe Prescribing Protocol**

Mrs. Burton informed the board that the bill is now in an appropriation suspension file.

Mrs. Thorfinnson felt that although the bill was in suspense it should be discussed by the Board, as it could be pulled out of suspense at any time prompting the Board to take a stance of support or opposition.

Dr. Buhari noted that there is a templated process on how to handle safe prescribing practices, however as a physician he has refrained from issuing narcotics on a temporary basis to ensure that there is no mishap that occurs from missing something within the patient's chart and/or failing to comply with the prescribing guidelines.

**Motion to oppose AB 1998: Opioids: Safe Prescribing Protocol. Motion** – Dr. Lally, **Second** – Dr. Buhari

- Roll Call Vote was taken
  - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Jensen, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – Mr. Moreno
- Motion carried to oppose AB 1998: Opioids: Safe Prescribing Protocol.

### **AB 2138: Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction**

Mrs. Burton explained that she and Mrs. Thorfinnson recently attended a meeting with consultants of the Assembly regarding AB 2138 which would ease the restrictions regarding licensing requirements for licensees who were prior offenders.

Should this bill move forward applicants who have previously been charged and convicted of a felony where five (5) or more years have lapsed will have the ability to apply for licensure without being automatically denied.



That applicant could subsequently obtain eligibility to be granted a license to practice in the state regardless of the licensing agency's opinion. However, the Board feels that it should be the discretion of the individual board, bureau, or committee to make the determination whether it feels an applicant should be eligible for licensure. More specifically, if the conviction is substantially related to the practice of medicine, the Board would have no ability to determine whether or not the physician is fully rehabilitated nor review any documentation with regard to the physician's ability to practice safely as the bill would require automatic licensure of the applicant.

The bill would also limit the Board's ability to place a physician on probation for any timeframe longer than 24 months. However, the Board has found that probationers in general spend their first year becoming acclimated to being on probation and registering for programs such as the PACE Program and/or complying with all other probationary requirements. Under AB 2138 the probationer could petition for early termination of probation after the first year, forcing the Board to not only grant the petition request, but also complete all administrative duties in response to the request to ensure that a response is provided to the petitioner within 90 days. Unfortunately, if the Board does not comply with the 90-day timeframe set forth by the bill the probation is automatically terminated, and the probationer is free to continue practicing with no restrictions.

The bill was written to provide easier access for individuals to get back into the workforce, however the Board does not feel that this bill should apply to those individuals licensed by the Board. Additionally, based on the review of applicants who were denied licensure in the years prior, the Board found that there were no more than 5 individuals who had been denied licensure, making the bill unnecessary for use by the board.

Ms. Mercado inquired if the bill applied to all individuals licensed under DCA and was advised that it did. Dr. Jensen recommended that the Board also note in the opposition letter that the bill is not only restricting public safety, the Board's statistical research has shown that there is not a substantial number of physicians who would be impacted by the bill, and the infractions would involve convictions and felonies and not small offenses. Additionally, the 90-day timeframe set forth does not leave the Board or other involved entities to properly prepare the required documents.

**Motion to oppose AB 2138: Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction. Motion – Dr. Lally, Second – Dr. Buhari**

- Roll Call Vote was taken
  - **Aye** – Dr. Buhari, Dr. Jensen, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – Mrs. Blair



- **Absent** – Mr. Moreno
- Motion carried to oppose AB 2138: Licensing Boards: Denial of Application: Revocation or Suspension of Licensure: Criminal Conviction.

**AB 2487: Physician and Surgeons: Education: Opiate – Dependent Patient Treatment and Management**

This bill would require a physician and surgeon to complete a continuing education course on opiate-dependent patient treatment and management, as specified, within 6 months of first receiving, or next renewing, a federal Drug Enforcement Administration registration to dispense narcotic drugs for patient treatment, unless the physician and surgeon meets the requirements of a qualifying physician within the federal Comprehensive Addiction Recovery Act of 2016.

Dr. Jensen felt that as a family practice physician, those physicians who are not pain management specialists should not be required to comply with and/or be held to the same standard of continuing education requirements surrounding courses for pain management treatment and management. She believed that the course requirement was a good idea, however the requirement should either be revised for those physicians who are not pain management specialists or be a requirement that is solely meant for pain management specialist.

**Motion to oppose AB 2487: Physician and Surgeons: Education: Opiate – Dependent Patient Treatment and Management. Motion** – Dr. Lally, **Second** – Dr. Buhari

- Roll Call Vote was taken
  - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Jensen, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – Mr. Moreno
- Motion carried to oppose AB 2487: Physician and Surgeons: Education: Opiate – Dependent Patient Treatment and Management.

**AB 2741: Prescription Drugs: Opioid Medications: Minors**

This bill would prohibit a prescriber from prescribing more than a 5-day supply of an opioid medication to a minor except in specified instances. It would also require a prescriber to take certain steps prior to prescribing a minor a course of treatment with

opioid medications including a discussion regarding opioid risks and obtaining consent except in specific instances.

Dr. Lally felt that most minors rarely if ever require the use of narcotics unless there is an extreme medical necessity for one such as reduction of broken bones or instances of cancer, where the prescribed amount would be more than a 5-day supply.

Dr. Jensen noted that the instances of acute trauma that were addressed by Dr. Lally were ones that were not noted in the bill as exceptions that should be. Additionally, Dr. Zammuto felt it disconcerting that a bill would be proposed that would set limitations on treatment practices of physicians in cases where aggressive treatment is necessary. Dr. Lally noted that although he believed in the theory of the proposed bill, he felt that the bill should be opposed pending amendment.

Ms. Mercado also raised concern with the fact that a 5-day supply may not be sufficient for a minor who is severely suffering, and may either be waiting to see his primary care physician or may have a parent who is not able to take time off from work to pick up their prescription from the pharmacy prior to them closing. The minor would ultimately end up suffering because of the bill.

**Motion to oppose AB 2741 unless amended: Prescription Drugs: Opioid Medications: Minors. Motion – Dr. Lally, Second – Dr. Jensen**

- Roll Call Vote was taken
  - **Aye** – Mrs. Blair, Dr. Buhari, Dr. Jensen, Dr. Lally, Ms. Mercado, Mrs. Williams, Dr. Zammuto
  - **Nay** – None
  - **Abstention** – None
  - **Absent** – Mr. Moreno
- Motion carried to oppose AB 2741 unless amended: Prescription Drugs: Opioid Medications: Minors.

**7. Presentation on the Bureau of Cannabis Control – Sara Gardner, Attorney III**

Sara Gardner, Attorney III, Bureau of Cannabis Control presented the Board with a Power Point Presentation regarding the process and procedures of the Bureau and answered all questions from the Board related to the Bureau's approval process for dispensaries.

**8. Board President's Report**

Dr. Zammuto informed the Board that he traveled to Sacramento on May 7, 2018, to attend the Osteopathic Physicians and Surgeons of California (OPSC) board meeting where he also participated in the legislative committee's bill review. After conclusion of the board meeting, OPSC hosted a reception for attendees as well as additional guests within the medical profession. During the reception Dr. Jim Wood, Co-Chair, Assembly Select Committee on Health Care Delivery Systems and Universal Coverage, announced that a proposed infusion of \$1 billion for health care in the State of California and another \$2-3 million dollars for the Song-Brown Training Program – Office of Statewide Health Planning and Development (OSHPD) has been requested for implementation.

Dr. Zammuto also informed the Board that he was unable to attend the Federation of State Medical Board (FSMB) Annual meeting held in North Carolina April 25-28, 2018, however he viewed and participated in the discussions via webcast.

## **9. Executive Director's Report**

Angie Burton updated the Board on licensing statistics, staffing, Board budget activity, and diversion program statistics which were included in the Board packet.

Mrs. Burton informed the Board that the search for a new Medical Consultant is nearing an end as the ECOS posting has recently ended. All applications submitted for the position will now be reviewed for candidate selection so that the hiring process may continue. Additionally, the executive staff was just informed that an analyst of the Enforcement Unit intends to retire at the end of May 2018, and the search to refill the vacancy will begin shortly thereafter.

Mrs. Burton informed the Board that she was not able to provide an accurate detailed report of the Board's budget as there have been issues with report productions under the new system being utilized. However, the information that was provided should be as accurate as possible to the actual fund projection. She provided updates regarding the remodeling of the Board's office space and notified the members that the Board was approved to purchase a high-density filing system, which should provide a major space saving in suite with regards to storage.

The DOJ certification of CURES commenced April 2, 2018, which triggered the 6-month grace period before the site's mandatory use which begins October 2, 2018. The Board will be emailing all physicians with a brochure explaining the usage requirements which will also be posted on the Board's website for ease of access.

Enforcement/ Discipline - The Board's Lead Enforcement Analyst Corey Sparks presented the enforcement report to the Board.

**10. Agenda Items for Next Board Meeting**

- B&P Section 2052
- SB 1448 (*Dr. Zammuto*)

**11. Future Meeting Dates**

- Thursday, September 27, 2018 @ 10:00 am – San Diego, CA
- Thursday, January 17, 2019 @ 10:00 am - Sacramento, CA
- Thursday, May 16, 2019 @ 10:00 am – Pomona, CA (**TBD**)

**12. Adjournment**

There being no further business, the meeting was adjourned at 2:26 p.m.