



BOARD MEETING MINUTES

Friday, January 20, 2017

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

STAFF PRESENT: Angelina Burton, Executive Director
Jason Hurtado, Esq., Legal Counsel, DCA
Machiko Chong, Executive Analyst
Corey Sparks, Lead Enforcement Analyst

BOARD MEMBERS ABSENT: Elizabeth Jensen, D.O., Board Member

The Board meeting of the Osteopathic Medical Board of California (OMBC) was called to order by President, Joseph Zammuto, D.O. at 10:00 a.m. at Department of Consumer Affairs (HQ2) - 1747 North Market Blvd., Sacramento CA 95834.

Dr. Zammuto called for a moment of silence to acknowledge the unexpected passing of the board's receptionist Susan Johnston.

Dr. Zammuto also acknowledged and thanked Michael Feinstein, D.O. who served on the board from 2012 through 2016, prior to voluntarily renouncing his board appointment due to health issues.

On behalf of the Business, Consumer Services and Housing Agency and the California Department of Consumer Affairs, Dr. Zammuto presented Dr. Lally with an award for his designation as the Physician of the Year by the American Osteopathic Foundation.

Dr. Krpan graciously accepted the award in Dr. Lally's absence and noted that he was proud of Dr. Lally's many achievements throughout his career.

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. Election of Officers

Board President

- Dr. Zammuto asked if there were any motions/nominations for election of Board President.
- Joseph Zammuto, D.O. was nominated for President
Motion – C. Mercado, **Second** – C. Buhari.
- Dr. Zammuto opened the floor to additional nominations, none were given.
- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Mr. Howard, Ms. Mercado, Mrs. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Lally, Dr. Jensen
- Dr. Zammuto was unanimously elected for Board President.

Vice President

- Dr. Zammuto asked if there were any motions/nominations for election of Board Vice President.
- James Lally, D.O. was nominated for Vice President
Motion – A. Howard, **Second** – C. Buhari.
- Dr. Zammuto opened the floor to additional nominations, none were given.
- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Mr. Howard, Ms. Mercado, Mrs. Williams, Dr. Zammuto

- **Nay** – None
- **Abstention** – None
- **Absent** – Dr. Lally, Dr. Jensen
- Dr. Lally was unanimously elected for Board Vice President.

Secretary/Treasurer

- Dr. Zammuto asked if there were any motions/nominations for election of Secretary/Treasurer
- Cyrus Buhari, D.O. was nominated for Secretary/Treasurer
Motion – J. Zammuto, **Second** – C.Mercado.
- Dr. Zammuto opened the floor to any additional nominations, none were given.
- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Mr. Howard, Ms. Mercado, Mrs. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Lally, Dr. Jensen
- Dr. Buhari was unanimously elected as Secretary/Treasurer.

4. Review and Approval of Minutes

Dr. Zammuto called for a motion regarding approval of the Board Meeting minutes of October 7, 2016.

- **Motion to approve the October 7, 2016 Board meeting minutes with no corrections. Motion** – Mr. Howard, **Second** – Mrs. Williams
- Roll Call Vote was taken
 - **Aye** – Dr. Buhari, Mr. Howard, Ms. Mercado, Mrs. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – Mrs. Blair
 - **Absent** – Dr. Lally, Dr. Jensen
- Motion carried to approve minutes with no corrections.

5. Executive Director's Report

Angie Burton updated the Board on licensing statistics, staffing, Board budget activity, and diversion program statistics.

Staffing - Mrs. Burton informed the board that the staffing level remained at 11.5 staff leaving no current vacancies. In late November, the board advertised to refill the office receptionist vacancy following the unexpected passing of Ms. Johnston. The board received 90 applications in response to the advertisement and after careful consideration and review of all submissions; interviews were conducted in late December. The board is happy to announce that Dina Ruprecht was selected to join the staff and has also attended her first BreEZe training. Mrs. Burton also made note that the board is currently reviewing the budget to see if there is adequate funding to create a permanent intermittent position to assist both the licensing and enforcement units.

Ms. Mercado inquired on the amount that would be necessary to fund an additional position within staffing and was informed by Mrs. Burton that the amount would be predicated on the position classification added. The board is looking to possibly hire a permanent intermittent Office Technician (OT) which has a starting salary of roughly \$2,800 monthly. Permanent intermittent positions are only able to work a maximum of 1,500 hours per fiscal year; however, the board would need to assess how many hours it would be able to absorb prior to implementing the new position.

CURES - DOJ estimates that as of November 15, 2016, roughly 4,262 Osteopathic Physicians and Surgeons have registered with the new CURES 2.0 database since it went live. Between August 15 - September 15, 2016 CURES was accessed 12,030 times solely by osteopathic physicians and the prescribing history reports of 24,017 patients were ran.

Mrs. Burton advised the board of impending fee changes that would be taking place on July 1, 2017 pursuant to the SB 1478 Omnibus Bill. The amended bill would no longer require physicians renewing as inactive status to pay the annual \$6 fee for the CURES program. In addition to the fee change, the board also submitted a request to the BreEZe team to update the renewal form to accurately reflect the amendments. The first set of renewals to reflect the fee change would be those licenses expiring July 2017.

Mrs. Burton informed the board of the CURES survey that had been compiled and distributed by UC Davis Medical Center to those osteopathic physicians that were renewing in the month of December. She made note that at least 20% of the osteopathic physicians renewing during the specified timeframe participated in the survey and added that the Medical Board of California received roughly a 23% participation rate.

Ms. Mercado questioned what the overall goal of the survey was and was advised by Mrs. Burton that it was administered so that the researchers could gain a better understanding of the database and see how it has been utilized by physicians and their counterparts thus far.

Mrs. Blair inquired about the postage costs incurred to administer the survey and was informed by Mrs. Burton that the board only utilized paper and copier resources during the transmittal process. All other fees were paid by UC Davis.

Enforcement/ Discipline - The boards Lead Enforcement Analyst Corey Sparks presented the enforcement report to the board.

Mr. Howard inquired about the timeframe of the average field investigations and why the closure rates drastically fluctuated throughout the year. He also asked if there was a way to obtain or compile a metrics that further detailed the board's open cases that are older than the 1-year goal and subsequently over 2 or 3 years to better understand why the cases were taking longer to close. He was informed by Mr. Sparks that many of the cases once opened are either routed to DOI or HQIU, and that many of the cases were still in HQIU awaiting processing due to low staffing which has made it a little difficult to close the cases that have been routed over in a timely manner.

Mr. Sparks also noted that twelve (12) of the boards Expert Reviewers have attended the training that was put on by the Medical Board of California in an effort to better assist them in completion of their reports of the enforcement cases reviewed. The board's training attendees were:

Rolf Knapp, D.O., Family Medicine; Richard Bond, D.O., Geriatrics; Shirley Wong, D.O., OB-GYN; John Kowalczyk, D.O., Urology; Gary Gramm, D.O., Family Medicine; Donna Marino, D.O., Pediatrics; Dan Miulli, D.O., Neurosurgery; Geraldine O'Shea, D.O., Internal Medicine; Marc Lynch, D.O., Pain Management; Deborah Arsenault, D.O., OB-GYN; Brian Loveless, D.O., OPP; & Eric Lindvall, D.O., Orthopedics.

6. Administrative Hearing(s)

10:35 a.m.

- Janet Pragit, D.O. - Petition for Early Termination of Probation

The Office of Administrative Hearing (OAH) Administrative Law Judge (ALJ) Marcia Larson conducted the above hearing.

7. Closed Session

The Board met in closed session to deliberate on the petition for early termination of probation of license listed above pursuant to Government Code section 11126(c)(3).

Return to Open Session

8. Budget Report – Mark Ito, DCA Budgets Office

Mr. Ito provided the board with an updated analysis of the board’s current budget and gave an in-depth explanation of the budget report and projected expenditures.

9. Board Outreach - Veronica Harms, DCA Deputy Director of Communications

Ms. Harms introduced herself to the board and gave a brief overview of her employment background highlighting some of the campaigns that she had previously worked on throughout her career. She provided the board with an example of an outreach video that had been created by her staff for the Medical Board and made note that the board would be tasked with creating a script for the video and the videographer would piece together the content and make additional edits as needed prior to dissemination. She explained that all of the services that would be offered to produce the outreach content are included in the monthly pro rata paid by the board. Ms. Harms included that the unit would also be willing to create a Facebook and Twitter page at the board’s request which they would put online to assist in the boards outreach efforts. Ms. Harms briefly discussed the other services that the Communications Unit offered for publication and design, as well as offering editing and digital print services.

Dr. Zammuto asked about the timeline of developing outreach content and was advised by Ms. Harms that it would be immediate once request was made by the board.

Ms. Mercado inquired what metrics were used to track the progress of the outreach campaign and was advised by Ms. Harms that currently there were no metrics in use. However, Google analytics and Facebook post analytics may be used to better gauge outreach progress.

Dr. Zammuto asked the students in attendance what they felt the best mode of communication would be in terms of outreach and was informed that facebook posts and the mini videos that are utilized in the timeline feeds would be a great way to increase outreach regarding osteopathic physicians and surgeons. With the videos you are able to play them on your screen without having to open an alternate site. Although the videos are short, they convey enough information for the viewer to gain a better understanding of the content provided.

10. Title 16 California Code of Regulations: Section 1636 Continuing Medical Education Progress Report

Discussion and possible amendments to Business and Professions Code 2454.5

Mrs. Burton informed the board members of the meetings that she held with both Board appointed legal counsel and the Senate Business and Professions Committee regarding the proposed regulatory changes that would be made to the board's Continuing Medical Education (CME) requirement. It was decided that it would be in the best interest of the board to revise the current CME statutes to ensure that the proposed language would be enforceable once the regulatory changes occur. The board members were presented with the proposed statutory language that would be amended the Business and Profession Code statute 2454.5 regarding the CME cycle. The amendments would align the CME and license renewal cycles. The CME requirement would be changed from 150 hours every 3 years to 100 hours every 2 years to align with the 2-year license renewal.

Dr. Zammuto called for a motion to accept the proposed statutory language which would amend Business and Professions Code 2454.5.

- **Motion to accept the proposed language which would amend Business and Professions Code 2454.5. Motion** – Mr. Howard, **Second** – Dr. Buhari.

Dr. Zammuto called for public comment.

Kathleen Creason, Director of Osteopathic Physician and Surgeons of California (OPSC) made note that the association is in strong support of the proposed amendments being made to the current CME structure. Mrs. Creason included that the current statute verbiage has created a lot of confusion among licensees regarding the timeframe in which all CME must be submitted in accordance to the renewal cycle.

- Roll Call Vote was taken
 - o **Aye** – Mrs. Blair, Dr. Buhari, Mr. Howard, Ms. Mercado, Mrs. Williams, Dr. Zammuto
 - o **Nay** – None
 - o **Abstention** – None
 - o **Absent** – Dr. Lally, Dr. Jensen
- Motion carried to accept proposed language.

Regulations Section(s):

- **1635 Required Continuing Medical Education;**
- **1636 Continuing Medical Education Progress Report;**
- **1641 Sanctions for Noncompliance**

The board members reviewed the proposed language which would amend California Code of Regulations Section(s) 1635, 1636, and 1641 regarding implementation of the audit process and self-certification of CME to the board by licensees. Mrs. Burton

explained that further dialogue took place with the CME compliance coordinators in office after the October 2016 board meeting, during which time the board discussed possible implementation of a hybrid audit process. After the meetings conclusion board staff informed management that utilization of a hybrid audit would increase workload. The hybrid audit would require review of AOA hours and trigger a subsequent review of allopathic CME submitted to the compliance coordinators well after the initial precursory review of osteopathic CME, resulting in workload duplication.

The proposed regulatory language would require the staff complete a 100% audit at a later time. It would also require that every osteopathic physician who is up for licensure renewal complete the proposed self-certification form that will be included with every renewal application. The physician would need to report the number of hours completed during the specified reporting cycle, indicate whether the pain management criteria has been completed and also require that the physician sign under penalty of perjury acknowledging that all requirements have been met as detailed.

The board would divide the audit process into two phases upon conclusion of the CME reporting cycle. The CME Compliance Coordinators would select a random population of physicians to audit that equaled 50% in the first year, leaving the remaining 50% to be audited after conclusion of the 4-year cycle. This change would prevent further backlogs as the office averages roughly 750 renewals every other month.

Dr. Zammuto wanted to further relay that the self-reporting form will in fact be a legally enforceable document which may result in disciplinary action such as penalties and fines and noted that the physicians will ultimately be held responsible. Mrs. Burton added that the board does currently have a mechanism in place to issue a citation and fine which is set at roughly \$1,000 for any physician who fails to comply with the CME requirement. In the event that a physician fails to comply with the audit request for submission of renewal documentation, the board will then have the ability to cite and fine the physician and require s/he to also submit the deficient CME requirement.

Mr. Howard inquired on how the board would complete CME audit selections, and how they would ensure that the same person is not erroneously selected twice to complete the audit. Mrs. Burton informed him that the audit would be random and that the BreEZe database may have the ability to randomly generate a report of physicians that would be selected to submit documentation at the time of renewal. Additionally, Mrs. Burton was not entirely sure of the BreEZe databases' ability to prevent duplicate data extraction for audit requests and stated that it may have to be done manually. However, she stated that it would be looked into prior to implementation.

Mr. Howard also inquired whether the regulatory language would specify the percentage of physicians who would be audited throughout the year and was advised by Mrs. Burton and Mr. Hurtado that it was not necessary to include that in the proposed

language. Inclusion of the CME audit process in the regulatory language would allow the board to audit the CME requirement at its discretion. Omission of the audit percentage would prevent processing constraints from being placed on the board. Mrs. Burton added that the board would then have the ability to add an audit percentage amount to its in-house policies and procedures which would also allow the board to amend the number of CME reports that are audited throughout the year when necessary.

Mr. Hurtado noted that making a motion to approve the regulatory language regarding the CME would be too premature as the board is requesting that legislative amendments be made to align the CME reporting cycle with the renewal cycle. The language would need to be brought back to the board for further discussion at a later time and date.

Dr. Zammuto called for public comment.

Dr. Krpan noted that although the board currently reviews 100% of the CME completed by each physician, he agrees with the board staff's recommendation of going to an audit system as the board does not have ample staff to both continue processing renewals in a timely manner and review 100% of the CME submitted. Those licensed physicians who are also members of the American Osteopathic Association (AOA) have always had the ability to submit their documents to the AOA to have them reviewed and inputted into a spreadsheet format; however, the physicians that are not members are submitting excessive amounts of documentation equaling 150 hours to the board for staff review. Because of these submissions the board's CME compliance coordinators are having a hard time keeping up with the review demands.

Mrs. Creason, OPSC, expressed concerns about the board's choice to not indicate the percentage of licenses to be audited within its regulatory language. Mrs. Creason recommended that language be added to indicate a minimum of 50% of licensees would be audited per renewal cycle.

Mrs. Blair asked if there was a way to ensure that the system will automatically capture all inadvertently unnoticed physicians who had not yet complied with the audit process at sometime within the 4 years. She also inquired on the board's ability to include verbiage in the proposed language that would ensure that those missed physicians be made to comply with the board's request prior to conclusion of the 4th year. Mrs. Burton informed Mrs. Blair that Mr. Sparks should have the ability to run a report that would allow the board to better identify those physicians who had not yet been selected for the audit process and certify that they do complete the audit in a timely manner. The board can create a spreadsheet or utilize QBIRT, however either way there should not be an issue of duplicate audits or forgotten physicians.

Dr. Zammuto called for adoption of the Osteopathic Medical Board CME Self-Certification form for renewal.

- **Motion to adoption the CME Self-Certification form.**
- **Motion** – Mr. Howard, **Second** – Mrs. Blair.

Dr. Zammuto called for public comment.

Kathleen Creason, OPSC, wanted to clarify whether the motion was to adopt the regulatory language as adopted or just the concept, and was advised that the motion was only to adopt the concept of the Self-Reporting form.

- Roll Call Vote was taken
 - **Aye** – Mrs. Blair, Dr. Buhari, Mr. Howard, Ms. Mercado, Mrs. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – Dr. Lally, Dr. Jensen
- Motion carried to accept the CME Self-Certification form.

11. 2016/2017 Oversight Report - Assembly Business and Professions Committee and Senate Business, Professions and Economic Development Committee: Discussion and Possible Approval

Mrs. Burton informed the board that the agenda item had been added in anticipation of committee response to the submitted oversight report, however to date staff had not yet received any questions or comments from either committee.

12. Agenda Items for Next Board Meeting

- 2016/2017 Oversight Report - Review of Hearing
- Legislative report of the CME process

15. Future Meeting Dates

- Thursday, May 18, 2017 @ 10:00 am - TBD
- Thursday, October 19, 2017 @10:00 am - Sacramento, CA

16. Adjournment

There being no further business, the Meeting was adjourned at 1:15 p.m.