



BOARD MEETING MINUTES

Thursday, September 27, 2018

BOARD MEMBERS PRESENT: Joseph Zammuto, D.O., President
Cyrus Buhari, D.O., Secretary/ Treasurer
Andrew Moreno, Board Member
Claudia Mercado, Board Member
Cheryl Williams, 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
James Lally, D.O., Medical Consultant
Corey Sparks, Lead Enforcement Analyst

BOARD MEMBERS ABSENT:

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.

1. Roll Call

Ms. 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 the May 17, 2018, and July 10, 2018 Board Meetings.

- **Motion to approve the May 17, 2018 and July 10, 2018 Board meeting minutes with no corrections. Motion** – Dr. Buhari **Second** – Dr. Jensen
- Roll Call Vote was taken
 - **Aye** –Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Ms. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – None

Motion carried to approve minutes with no corrections.

4. Board President's Report

Dr. Zammuto informed the Board that he attended the annual meeting of the American Association of Osteopathic Examiners (AAOE) in Chicago on July 19th. There were 16 state boards in attendance consisting of individual licensing boards which process licensing applications of only osteopathic physicians, as opposed to composite boards which process applications for allopathic and osteopathic physicians. The AAOE provides the osteopathic state boards with the ability to discuss national policy and concerns within the osteopathic profession. At the meeting Dr. Chaudhry, President and CEO of the Federation of State Medical Boards (FSMB) met to discuss current issues. The FSMB is composed of 70 boards consisting of 50 states, 16 osteopathic state medical boards, and 4 territories (Guam, Virgin Islands, Puerto Rico, & Commonwealth of the Northern Mariana Islands). Attendees also received a presentation from the President of the National Board of Osteopathic Medical Examiners (NBOME) updating the state representatives of the status of testing for medical students. The American Osteopathic Association (AOA) provided representatives with a legislative update and informed attendees that a Canadian organization has recently surfaced and claims to not only offer certification in osteopathic medicine utilizing online programs but allows attendees to call themselves “osteopathic physicians.” The program is not dually sanctioned in the United States and licensing boards have been fielding calls from applicants inquiring whether they are able to obtain osteopathic licensure with the Canadian certification received online. It has become not only a state concern but a national concern regarding a misrepresentation of physicians within the profession and also misleads the public/consumer.

Mr. Moreno asked if there were any other states that have been willing to accept applications from all Canadian certified osteopaths and was informed by Dr. Zammuto that unfortunately those applicants do not meet the Federally mandated requirements

that have been implemented which require that physicians applying for licensure be educated in the United States.

Ms. Williams inquired if there would be a competency test compiled and administered in the future to test the aptitude of nationally trained osteopaths and was advised by Dr. Zammuto that he was not aware or any at this time.

Unfortunately, the board(s) does not have authority over these individuals as they are not licensed by the regulatory agencies, which is a matter of concern. Therefore, the AOA and its legal department have been looking into the issue and will provide updates as they come.

They also discussed the issue of preventing physician burnout and safe-haven protection for physicians. Kathleen Creason, the new Executive Director of Physician Wellness Institute -California Medical Association, which is a joint effort with Stanford University, will be addressing this issue. Dr. Zammuto applauded Ms. Creason's decision to move into the new position and noted that it would greatly impact not only the healthcare profession and physicians, but also medical students, residents, and interns. There is a major risk of burnout at each of the stages as well as increased risk of substance abuse and suicide. The house of medicine has realized that the profession needs to be more proactive and reactive at assisting physicians to prevent future burnout.

Dr. Zammuto found it interesting that postgraduate training licenses were also discussed at the meeting, as the Board has recently been dealing with the preparations of implementing the new postgraduate training license due to Senate Bill 798 (Hill). He informed the Board that there are states who currently utilize postgraduate training licenses as well as the unrestricted licensing process and noted that the FSMB will be more than willing to assist the Board with the implementation of the postgraduate training license as well as provide any additional legislative updates that are introduced as they become available.

5. Budget Update – Mark Ito, DCA Budget Office

Mark Ito provided the Board with a detailed overview of the Board's current fund condition for the fiscal year thus far.

Mr. Moreno inquired on whether there is a standard range for months in reserve that the Board should remain between and was informed by Mr. Ito that the Board is in a good place right now; however, they should hopefully remain between 6-12 months in reserve. Dr. Zammuto inquired if there were any indicators that would prompt the Board to request a fee increase to ensure that there are sufficient funds and was advised that

the Executive Director would merely reach out to the budget office to begin the process of requesting a fee increase.

6. 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.

Staffing - Ms. Burton informed the Board that the search for a new Medical Consultant concluded and was happy to announce that Dr. James Lally was hired as the Board's new Medical Consultant.

Nicole Le, Chief, DCA Office of Human Resources (OHR), provided the Board with information regarding the process of hiring a new Executive Director once Ms. Burton retires.

Ms. Le explained that OHR would be working closely with the selection committee who will be reviewing applications and conducting interviews of candidates who have applied for the executive director vacancy. Ms. Le stated that OHR has been working closely with Ms. Burton on revising the proposed duty statement as well as the vacancy posting which would be used on the ECOS system. Ms. Le advised that the Board should consider setting a date to conduct a teleconference regarding review and approval of the proposed documents so that they may continue with the recruitment process. She stated that additional advertising could be published through the Capitol Morning Report and could also be posted on social media outlets such as Facebook, Twitter, etc. She stated that the members of the selection committee should have a well-rounded understanding of the Board as well as be able to address any challenges that they foresee being an issue for Board in an attempt at selecting the best candidate to fill the position.

Mr. Moreno inquired whether remaining Board members would be able to interview the final candidates and was advised by Ms. Le that the selection committee would be doing all preliminary interviews to narrow down the candidate pool and that the full Board will interview the top candidates. Ms. Le recommended that the interviews be conducted near the end of November, with the full Board meeting in December. If the Board members are unable to select a qualified applicant, the Board would have the option of appointing an Interim and/or Acting Executive Director. Ms. Le explained that Interim and Acting appointees would have the same duties and responsibilities, however an Interim Executive Director would need to be voted in by the Board members and would be eligible to receive compensation for services rendered. On the contrary, the Acting Executive Director need only be appointed by the Board President and would need to be a current Board employee, however they would not receive any compensation for serving as an Acting Executive Director.

Ms. 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 major space saving in the suite.

CURES – Dr. Zammuto noted that there have been many physicians who have experienced issues when changing their passwords at the 90-day mark, and the result has been that some security questions previously utilized by enrolled physicians no longer worked. The physician would need to contact the help desk for assistance. Another issue Dr. Zammuto noticed was that the CURES database created by DOJ does not coincide with other databases outside of the state to ensure that there are not multiple prescriptions being issued to patients.

Ms. Burton notified the Board that there are currently 6,116 osteopathic physicians registered with the Board. Representatives at the CURES unit have notified the Board and provided them with a list of physicians who are not yet registered for one reason or another.

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

7. Discussion Regarding Mental Health Question on OMBC Initial Application

Concerns have recently been raised regarding the questions that are asked of applicants on the Board's licensing application. Ms. Creason noted that the FSMB has released numerous documents regarding physician burnout and the questions that they feel should be utilized by regulatory boards inquiring on the mental health status of an applicant. Ms. Creason has found in her review of documents since appointment to her new position that one of the causes leading to physician burnout is the stigma surrounding mental health issues and the fact that physicians are trained to be resilient and display resistance to showing weakness. Ms. Creason added that a recommendation has been made to ask about the current mental and/or physical health conditions that may impact the physician's ability to practice. By asking questions that are not directly related to the physician's ability to provide quality patient care it allows them to focus more directly on the physician's mental state. She recommended consideration and adoption of the FSMB's language which was provided to Ms. Burton and the Board members.

Dr. Zammuto added that the AAOF is in the process of developing a funded process specifically targeting osteopathic medical students who are at risk of burnout or suicide.

The AAOF is in the process of compiling the resources necessary to fund such a project. They are very much involved and concerned about the health and well-being of up-and-coming physicians within the profession.

Dr. Lally inquired on the current verbiage regarding mental health on the Board's application and Ms. Burton provided him with the current language. Dr. Zammuto noted that nationally there may be some physicians who may be at risk of burnout but are not willing to disclose the specifics of their condition. Therefore, the hope is that the revised question will remain more open ended which will allow physicians the ability to be more open and willing to disclose any conditions that may be present.

Ms. Burton noted that the Medical Board of California (MBC) application was also included in the Board packet so that the Board can review their mental health verbiage however, the MBC is also in the process of revising their mental health status information. The MBC will be reaching out to the Board to provide them with updates as they progress.

Ms. Mercado asked what the Board would do in the event that a physician chooses to disclose their mental health information and was advised by Ms. Burton that it is a case by case scenario and that the Board does request mental health evaluations for those physicians who do provide the Board with notification of mental health impairments.

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

Section 1690 – Postgraduate Training License Non-Refundable Application Fee

Ms. Thorfinnson provided the Board with background information regarding the Postgraduate Training License Non-Refundable Application Fee regulation packet.

Ms. Thorfinnson noted that the Board would not be able to implement the fee change in BreZE until the Board has promulgated regulations. Ms. Thorfinnson is hoping to expedite the regulation process for this packet to ensure that the language is approved in time for the fees to be implemented, as she is aware that the average time frame could take upwards of 2 years.

Dr. Zammuto inquired on the last time the Board increased its fees and was advised by Ms. Burton that the last fee increase took place in 1995, however it was only a temporary 2-year increase which raised the biennial renewal fees from \$200/yr. to \$300/yr. In 1999 the Board reduced the biennial fee back to \$200/yr. for the renewal cycle.

Ms. Thorfinnson noted that she is bringing the regulatory proposal to the Board because it would be considered new workload and cost attributed to implementation and ongoing maintenance of the new license type. The board may promulgate fees for new workload without respect to their reserve as fees cover workload. If the fees are raised for the current workload, it would be more complex. For the proposed postgraduate training fee, the Board needs to consider the new workload and expense attributed to the new workload, implementation and ongoing management costs. The proposed fees will not cover the implementation in entirety, however the board was also provided with some considerations to review with regards to covering those costs.

Dr. Zammuto inquired if any of the finances consider the money that may possibly be received between FY 19-20 and was advised by Ms. Thorfinnson that currently the structural deficit reflects that the Board is consistently spending money every year. Although fees are being received which increase the reserve account, the Board is still however spending more money than it is making. When it comes to increasing fee amounts the Board may need to possibly consider raising them around FY 20-21, as the Board will continue to experience a deficit causing them to begin utilizing the reserve funds available. The fee revenue is for the application will not cover the whole cost to implement the training license. If the Board opts to implement the proposed \$400 application fee which would be nonrefundable and last 3 years, the board would generate \$120,000, however it would not meet the \$350,000 cost to create a position. However, if the board was opting to offset the cost than it would need to charge roughly \$1,000 to cover the cost.

Dr. Zammuto asked what the Medical Board of California charged its licensees and was advised that their application fee was roughly \$491, and their license renewal fees were \$780. For their Postgraduate applications they are considering charging \$491 for the application fee and roughly \$400 for the renewal.

Ms. Thorfinnson informed the board that the application fee for implementation of the new license would not likely be the largest revenue generator, however the renewal fee for the license would generate the most revenue. The Board has entertained the idea of not charging an application fee for any licentiate that later requested a full unrestricted license after having completed the 36 months of training, however they would still pay a licensing fee upon approval of their licensing application. Additionally, the Board may still take a loss of \$130,000 from implementation of the Postgraduate Training licensing fees should the implemented fees be less than \$1,000, however the Board may still recoup that loss on the back end by increase the renewal fees of current and newly licensed physicians.

The implementation cost for BreEZe was estimated to be \$80,000, however DCA notified the Board that the charge would instead be included in the regular overhead cost charged to the Board. The Board's only concern is what could happen if the

\$80,000 was not included in the overhead cost and is aware that the Board may see an increase in its accrued fees, however it should hopefully not be an issue.

Ms. Burton asked Ms. Knight whether the Board had an option of going over the statutorily mandated ceiling for the application fee charged on the new license or if it had to remain at \$400. She was advised by Ms. Knight that because no ceiling has been set for the Postgraduate Training license that it would need to be something that the Board called out separately if they would like to set one.

Dr. Lally noted that the Board should take into account GME accreditation which is now a single pathway process for both allopathic and osteopathic physicians, and noted that the Board should be aware that the GME offices may have an issue cutting different check amounts for the Postgraduate training license applications for each board. Dr. Zammuto inquired if the Board could adopt the same financial structures of the Medical Board instead of recreating one. Ms. Knight state that she would do some research and asked to table to the conversation until she could find the Medical Boards fee structure as set forth.

Ms. Burton expressed concerns regarding implementing an application fee over \$400 for the Postgraduate Training license and noted that it may not look good if it costs more than the initial application fee for an unrestricted license. However, the Board did note that the application fees for residents are generally paid by the training program so it may not be an issue when it comes to the perception of the fees being more for application type versus the other.

Dr. Zammuto called for a motion to increase the boards postgraduate training application fee from \$400 to \$491.

- **Motion to approve the proposed text for a 45 day public comment period and delegate to the EO the authority to adopt the proposed regulatory changes if there are no adverse comments received during the public comment period, to follow established procedures and processes in doing so, and also delegate to the EO the authority to make any technical and non-substantive changes that may be required in completing the rulemaking file. Motion – Dr. Zammuto Second – Dr. Jensen**
- Roll Call Vote was taken
 - **Aye** –Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Ms. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – None

Motion carried to increase the boards postgraduate training application fee from \$400 to \$491.

Discussion Section 1690 – Initial Licensing Application Fee Increase

Ms. Thorfinnson provided the Board with background information regarding the Physician and Surgeon Certificate Application Fee regulation packet.

Ms. Thorfinnson noted the proposed language was being amended to increase the fee amount from \$200 to \$400 for the Physicians and Surgeon Certificate application fee. Given the deficit of the Board, although this change does not amount to a major increase of board funds it may provide minimal assistance. Additionally, the fee amount has never been amended and it is statutorily mandated that the Board *does* have the authority to raise it to not more than \$400.

Ms. Thorfinnson provided the board with some future projections of the boards financial health should the fee not be amended, and added that the increase of workload in office should justify the Boards request to increase the fee.

Dr. Zammuto called for a motion to increase the boards application fee from \$200 to \$400.

- **Motion to approve the proposed text for a 45 day public comment period and delegate to the EO the authority to adopt the proposed regulatory changes if there are no adverse comments received during the public comment period, to follow established procedures and processes in doing so, and also delegate to the EO the authority to make any technical and non-substantive changes that may be required in completing the rulemaking file. Motion – Dr. Zammuto Second – Dr. Jensen**
- Roll Call Vote was taken
 - **Aye** –Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Ms. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – None

Motion carried to increase the boards application fee from \$200 to \$400.

Discussion Section 1663 – Disciplinary Guidelines

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

Ms. Thorfinnson informed the board that the document remained relatively the same, however there was one amendment made to page 31 of the Disciplinary Guidelines adding Section 2052 Unlicensed Practice by Physicians and Surgeons.

At the board meeting held in May Dr. Buhari and Ms. Creason 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 could be done. The Board was since advised by legal that they would in fact be able to add citable offenses to both the Disciplinary Guidelines as well as keep them in their own section, as the Board felt that it is a serious matter. Additionally, when a physician has a revoked license the Board no longer has jurisdiction over the licensee, however by adding this language to the disciplinary guidelines the Board would continue to have authority over the physician's license.

Mr. Moreno inquired what the Board would do if a licensee was practicing with an expired license and the lapsed license was due to carelessness and/or a licensee was practicing 2 or more days after their license has expired and wanted to know how the Board would determine the amount of time the physician would have to serve on probation. He was advised by Ms. Burton that it would fall under the cite and fine table, however by including BCP Section 2052 in the disciplinary guidelines the Board could then act against unlicensed physicians, those practicing while on suspension, etc.

Dr. Zammuto motioned for approval of the amended language as proposed of Section 1663 – Disciplinary Guidelines

- **Motion to approve the proposed text for a 45 day public comment period and delegate to the EO the authority to adopt the proposed regulatory changes if there are no adverse comments received during the public comment period, to follow established procedures and processes in doing so, and also delegate to the EO the authority to make any technical and non-substantive changes that may be required in completing the rulemaking file. Motion – Dr. Zammuto Second – Dr. Jensen**
- Roll Call Vote was taken
 - **Aye** –Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Ms. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – None
- Motion carried to accept amended language of Section 1663 – Disciplinary Guidelines.

Discussion Section 1659.31 – Citable Offenses

Ms. Thorfinnson provided the Board with background information regarding the Citable Offenses regulation packet and briefly discussed the citations being amended.

Ms. Thorfinnson informed the Board that the document remained relatively the same, however there was one amendment made adding 11165.4 to the list of citable offenses which discusses the physician's failure to consult the CURES database after October 1, 2018. Additionally, BPC Section 2052 which was previously listed as new language was changed to reflect standard language for full disclosure. Ms. Thorfinnson also noted that it would be kept in the list unless otherwise requested to be removed by the Board.

Dr. Zammuto motioned to add the CURES requirement as a citable offense.

- **Motion to approve the proposed text for a 45 day public comment period and delegate to the EO the authority to adopt the proposed regulatory changes if there are no adverse comments received during the public comment period, to follow established procedures and processes in doing so, and also delegate to the EO the authority to make any technical and non-substantive changes that may be required in completing the rulemaking file. Motion – Dr. Zammuto Second – Dr. Jensen**
- Roll Call Vote was taken
 - **Aye** –Dr. Buhari, Dr. Jensen, Ms. Mercado, Mr. Moreno, Ms. Williams, Dr. Zammuto
 - **Nay** – None
 - **Abstention** – None
 - **Absent** – None
- Motion carried to add the CURES requirement as a citable offense.

9. Pending Legislation: Discussion and Possible Action

Ms. Burton briefly went through the legislative bills brought forth that pertained to the osteopathic profession and noted which bills had been chaptered since the last Board meeting.

10. Discussion Regarding Guidelines for the Recommendation of Cannabis for Medical Purposes – Update

Dr. Zammuto recommend that the Board Review BPC sections 252.3 and 2290.5 prior to taking action on adoption of the Guidelines for the Recommendation of Cannabis for Medical Purposes.

11. Agenda Items for Next Board Meeting

- Discussion and Possible Action Regarding Guidelines for the Recommendation of Cannabis for Medical Purposes SB 1448 (*Dr. Zammuto*)
- DCA Update – Board & Bureau Relations (*Dr. Zammuto*)

12. Future Meeting Dates

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

13. Adjournment

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