



California State Board of Pharmacy

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BUSINESS, CONSUMER SERVICES AND HOUSING AGENCY

DEPARTMENT OF CONSUMER AFFAIRS

GOVERNOR EDMUND G. BROWN JR.

**STATE BOARD OF PHARMACY
DEPARTMENT OF CONSUMER AFFAIRS
PUBLIC BOARD MEETING
MINUTES**

DATE: September 7, 2018

LOCATION: West Coast University – Classroom 372
590 North Vermont Avenue
Los Angeles, CA 90004

BOARD MEMBERS PRESENT: Victor Law, Licensee Member, President
Gregory Lippe, Public Member, Vice President
Ricardo Sanchez, Public Member
Albert Wong, Licensee Member
Stanley Weisser, Licensee Member
Maria Serpa, Licensee Member
Ryan Brooks, Public Member
Amjad Khan, Public Member

BOARD MEMBERS NOT PRESENT: Lavanza Butler, Licensee Member
Valerie Muñoz, Public Member
Shirley Kim, Public Member
Allen Schaad, Licensee Member
Deborah Veale, Licensee Member

STAFF PRESENT: Virginia Herold, Executive Officer
Anne Sodergren, Assistant Executive Officer
Laura Freedman, DCA Staff Counsel
Kelsey Pruden, DCA Staff Counsel
MaryJo Tobola, Sr. Enforcement Manager
Desiree Tulleners, Deputy Attorney General

I. Call to Order, Establishment of Quorum, and General Announcements

President Law called the meeting to order at 9:03 a.m.

Board members present: Victor Law, Gregory Lippe, Ricardo Sanchez, Albert Wong, Stanley Weisser, Maria Serpa and Ryan Brooks.

II. Public Comments on Items Not on the Agenda/Agenda Items for Future Meetings

President Law welcomed the board members and the public. President Law thanked the Dean of West Coast University for allowing the board to conduct the board meeting at their school. President Law

noted that one of his objectives as President is to conduct meetings at pharmacy schools throughout the state, so students and local pharmacists can more easily access and participate in board meetings.

Member of the public, Robert Stein, requested the board consider a future agenda item regarding CURES transactions. Mr. Stein explained that prescription transactions that are submitted into CURES do not accurately account for instances when a prescription is not picked up by the patient. He stated there currently does not appear to be a method to reverse transactions. President Law stated that this suggested agenda item would be forwarded to the Enforcement Committee.

Kathy Besinque requested the board consider a future agenda item regarding the supervision of intern pharmacists during home visits. Currently, ACPE mandates that all pharmacy students participate in interpersonal communication. It is her observation that students are challenged with participating in home visits with providers under the current supervisory requirements. The public member asked the board to consider Colorado's process which allows medical providers to supervise intern pharmacists in lieu of a supervising pharmacist. President Law stated that this suggested agenda items would be forwarded to the Licensing Committee.

Former board member, Stan Goldenberg, asked the board to consider modification of the CURES requirements in long term care facilities. On October 1, physicians will be required to check CURES before prescribing any controlled drug. He asked the board to consider a waiver to this requirement for physicians who work in these types of institutionalized and controlled settings. He stated that monitored patient histories in long term care facilities could justify this type of waiver. Such consideration would allow for more timely access of medication to patients, while meeting the intent of the law.

III. Discussion and Consideration of Business and Professions Code Section 4008 Relating to the Board's Employment of Legal Counsel

President Law stated that board executive staff have met with the department to discuss recruitment of an independent legal counsel. President Law and Vice President Lippe met with DCA Director Grafilo; Ryan Marcroft, Deputy Director, Legal Affairs Division; and Grace Arupo Rodriguez, Assistant Deputy Director, Legal Affairs Division. As part of this meeting, board leadership was advised that the current administration does not support a decentralized legal counsel model. In lieu of the board hiring counsel that would report directly to the board's executive office, DCA is offering a compromise proposal. President Law explained that under the DCA's proposal the department would establish a limited term attorney position and would enter into an MOU with the board to fund the position. DCA would complete the recruitment for the position but would allow a member of board staff to participate in the recruitment process. The attorney would be an employee of the department and would report to the Legal Affairs Office for supervision. The attorney would be dedicated exclusively to board work and would be available to work at the board's office part-time.

President Law stated that he and Mr. Lippe felt that the DCA proposal was a good compromise and presented this alternative to the full board for its consideration. President Law explained that should the board agree to accept the DCA proposal, this recruitment could be expedited.

Board Member Stan Weisser expressed his concerns regarding the lack of representation at this board meeting by the Department of Consumer Affairs. Mr. Weisser stated that a presentation by DCA or the legal affairs office to the full board could allow for a more informed decision. Mr. Weisser added that the proposal would lead to an inherent conflict between who the lawyer reports to and who their client is. He explained that there may be issues where the board and the department's interests differ, creating a

conflict for the lawyer to determine who's interest they should represent. Mr. Weisser concluded that if the board was granted authority to hire an attorney, then the department should not hinder the process.

President Law agreed with Mr. Weisser's comments regarding conflicts of interest, however he explained that since the department is preventing the board from hiring an attorney this proposal would at least get the board extra help to improve the regulation timelines and expedite other legal reviews.

Board member Lippe stated that during the meeting the department stated that they did not have the authority to grant the board permission to hire an attorney, it would have to be approved by the governor's office. He also noted that according to the department the Governor's office is not supportive of a decentralized legal counsel model.

Mr. Weisser expressed concern that this proposal does not significantly change the board's current legal model – even with two lawyers there is still a significant backlog of items for legal review. He stated that at a minimum he would like the department to explain to the full board their thought process so that Mr. Lippe and President Law do not have to defend the department's position to the board.

Ms. Freedman stated that she and Ms. Pruden are very clear that the board is their client even though they are employed by DCA. She reassured the board that they take their duty of loyalty and confidentiality to the board very seriously.

Mr. Books stated that the board having its own legal counsel would allow the attorney to become an expert on the complexity of pharmacy law and would assure consistency in the board's regulations and enforcement decisions.

Board member Amjad Khan arrived at 9:28 a.m.

Mr. Weisser stated that the department seems hesitant to grant the board independence, as illustrated by the blocking of hiring an attorney and only allowing the board to hire an executive officer with the department's permission (agenda item IV).

Board member Albert Wong stated that if the law allows the board to hire its own attorney then the department should not prohibit the board.

Mr. Brooks asked how the department can prohibit the board from hiring an attorney if the law allows for it. Ms. Freedman explained that establishing a position within state service is subject to a lot of laws and oversight by various control agencies.

Mr. Books stated that in order to make a decision the board needs to fully understand the process for establishing a position and hear from the department regarding their reasoning for opposing a decentralized legal counsel model.

Former board member Holly Strom stated that during her tenure as board president there were numerous conflicts that arose between the department and the board on policy issues.

President Law stated that the board directed staff to start the recruitment process in January 2018 and there has been no progress since then. He explained that the proposal would at least get the board more legal help and would guarantee that the board would have a level IV attorney dedicated to the board.

Mr. Weisser again stated that at a minimum the board should receive a presentation by the DCA or the legal department so that the board can hear their reasoning directly. He added that President Law and Mr. Lippe should not be put in the position of defending the department's proposal.

Board member Ryan Brooks asked for an example of a conflict between the board and DCA.

Virginia Herold clarified the two levels of legal review required during the rule making process. Ms. Herold explained that initially, legal counsel is required to review language representing the interests of the board, at a later time, the same legal counsel is required to review the regulations package representing the interests of DCA. Ms. Herold informed the board that, at times this process has required the attorney to represent conflicting interests. Ms. Herold stated that employing an attorney, who solely represents board's interests, would avoid such conflicts.

Board member Maria Serpa expressed her concern that accepting the department's proposal sets a precedent of the department to giving the board lesser autonomy than the law grants the board. She encouraged the board to consider the long-term consequences of the decision and agreed that the department should provide a presentation to the full board before they make a decision.

President Law stated that the board has a significant legal backlog and there is an urgent need to have a dedicated lawyer, even if it requires a compromise. Mr. Brooks responded that the board should not rush to make a decision because the department is not threatening to take away the board's current attorneys, the process will simply remain at status quo until a decision is made.

Board member Albert Wong stated that the board should fight for what will be best for the board in the long term. Board Member Ricardo Sanchez stated that he understands the frustration with the delay in implementation. Mr. Brooks stated that the board should focus on doing the right thing long-term rather than rushing to make a decision.

MOTION: Table the action taken by the board during its January 2018 Board Meeting related to the hiring of counsel. Approve the DCA proposal to enter into an MOU with the DCA for purposes of establishing an Attorney IV position and authorize the Executive Officer to carry out the proposal, including by securing the necessary funding to pay for the position.

M/S: Lippe/Brooks

Support: 3 Oppose: 5 Abstain: 0

Board Member	Support	Oppose	Abstain	Not Present
Brooks		x		
Butler				x
Khan		x		
Kim				x
Law	x			
Lippe	x			
Munoz				x
Sanchez	x			
Schaad				x
Serpa		x		
Veale				x
Weisser		x		
Wong		x		

After the motion failed the board asked staff to invite DCA or DCA Legal Affairs to attend the next full board meeting and provide an informational presentation on the matter to the full board.

IV. Executive Officer Recruitment and Selection Process

Department of Consumer Affairs’ Personnel Officer, Nicole Le, provided a presentation on the recruitment process for the board’s new Executive Officer. Ms. Le provided information regarding the Executive Officer’s duty statement and recruitment announcement, creation of a recruitment and selection committee, and membership of the recruitment and selection committee, including possible elections or delegation to the Board President.

The board discussed the Executive Officer recruitment announcement and the board made the following changes:

- Add “experience” to bullet number #1 and #3.
- Require a minimum of 5 years of experience under the desired qualifications and make the new first bullet point.
- Add a bullet to require experience in working with a regulatory board.
- Require the Statement of Qualifications not to exceed 5 pages.
- Change “resume/curriculum vitae” to “resume *or* curriculum vitae.”

Motion: Approve the recruitment announcement, as edited by the board.

M/S: Lippe/Brooks

Support: 8 Oppose: 0 Abstain: 0

Board Member	Support	Oppose	Abstain	Not Present
Brooks	x			
Butler				x
Khan	x			
Kim				x
Law	x			
Lippe	x			
Munoz				x
Sanchez	x			
Schaad				x
Serpa	x			
Veale				x
Weisser	x			
Wong	x			

The board discussed the executive officer job duty statement and made the following changes:

- Under specific assignments section “E” add a new bullet stating “issues, when necessary, cease and desist orders to sterile compounders and facilities that pose a significant public risk.” Legal counsel, Ms. Freedman, will provide Nicole with the final language.
- Add that the position requires the approval of the director at the end of section “G”.
- Add that the EO has the authority to appoint and fire AEO and CEAs in the “Supervision Exercised” section.
- Add revision date to the bottom of every page using the date the board approves the duty

statement.

Motion: Approve the executive officer job duty statement, as amended.

M/S: Lippe /Wong

Support: 8 Oppose: 0 Abstain: 0

Board Member	Support	Oppose	Abstain	Not Present
Brooks	x			
Butler				x
Khan	x			
Kim				x
Law	x			
Lippe	x			
Munoz				x
Sanchez	x			
Schaad				x
Serpa	x			
Veale				x
Weisser	x			
Wong	x			

The board discussed the membership of the executive officer selection committee.

Motion: Authorize President Law to lead the executive officer selection committee. Delegate authority to President Law to appoint a second member to the committee.

M/S: Brooks/Sanchez

Support: 8 Oppose: 0 Abstain: 0

Board Member	Support	Oppose	Abstain	Not Present
Brooks	x			
Butler				x
Khan	x			
Kim				x
Law	x			
Lippe	x			
Munoz				x
Sanchez	x			
Schaad				x
Serpa	x			
Veale				x
Weisser	x			
Wong	x			

The board discussed the Executive Officer Recruitment announcement.

Motion: The board authorizes the nationwide recruitment for the Board of Pharmacy Executive Officer position.

M/S: Weisser/Lippe

Support: 8 Oppose: 0 Abstain: 0

Board Member	Support	Oppose	Abstain	Not Present
Brooks	x			
Butler				x
Khan	x			
Kim				x
Law	x			
Lippe	x			
Munoz				x
Sanchez	x			
Schaad				x
Serpa	x			
Veale				x
Weisser	x			
Wong	x			

The board recessed for a break at 10:39 am. and resumed at 10:56 a.m.

V. Petitions for Reinstatement of Licensure or Other Reduction of Penalty

Administrative Law Judge Laurie Pearlman presided over the following petitions for reduction of penalties.

- Clarence Lloyd, RPH 46890

The board recessed for break at 11:40 a.m. and resumed at 11:45 a.m.

- Jun Yamasaki, RPH 19983

The board recessed for lunch at 12:36p.m. and resumed at 1:18p.m.

- Oladimeji Falemi, RPH 36945

The board recessed for break at 2:07 and resumed at 2:17pm

- Heidi Minson, TCH 46372

- Tutankha Allen, TCH 58569

VI. Closed Session Matters

The board recessed into closed session at 4:01 p.m.

Board Member Ryan Brooks left the meeting at 5:09 p.m.

VII. Reconvene Open Session

The board reconvened to open session at 5:25 p.m.

President Law adjourned the meeting at 5:27 p.m.