



**California State Board of Pharmacy
Department of Consumer Affairs
Public Board Meeting Minutes**

Date: November 19, 2020

Location: Teleconference Public Board Meeting
Note: Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 17, 2020, neither a public location nor teleconference locations are provided.

Board Members

Present: Gregory Lippe, Public Member, President
Debbie Veale, Licensee Member, Vice President
Maria Serpa, Licensee Member, Treasurer
Ryan Brooks, Public Member
Lavanza Butler, Licensee Member
Shirley Kim, Public Member
Seung Oh, Licensee Member
Jignesh Patel, Licensee Member
Ricardo Sanchez, Public Member
Jason Weisz, Public Member
Albert Wong, Licensee Member

Staff Present: Anne Sodergren, Executive Officer
Lyle Matthews, Assistant Executive Officer
Norine Marks, DCA Staff Counsel
Eileen Smiley, DCA Staff Counsel
Debbie Damoth, Administration Manager

November 19, 2020

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

President Lippe called the Board Meeting to order at 9:00 a.m.

President Lippe advised all individuals observing or participating in the meeting that the meeting was being conducted consistent with the provisions of Governor Gavin Newsom's Executive Order N-29-20. Mr. Lippe advised participants watching the webcast could only observe the meeting. He noted anyone interested in participating

in the meeting must join the WebEx meeting using the instructions posted on the Board's website.

Department of Consumer Affairs' staff provided general instructions for the WebEx Board Meeting for members of the public participating in the meeting.

President Lippe advised those participating in the teleconference the Board would convene in closed session after deliberating on the open session items, except adjournment.

Roll call was taken. Board Members present: Ryan Brooks, Debbie Veale, Seung Oh, Ricardo Sanchez, Jason Weisz, Maria Serpa, Jignesh Patel, Albert Wong and Greg Lippe. A quorum was established. Members Lavanza Butler and Shirley Kim joined the meeting at 9:05 a.m.

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

Members of the public were provided with an opportunity to provide comments; however, no comments were made.

III. Discussion and Consideration of Board Policy Regarding Expansion of Duties of a Pharmacy Technician to allow for Administration of Vaccines included on the Recommendations Provided by the federal Advisory Committee on Immunization Practices if Delegated by a Supervising Pharmacist

President Lippe reminded the members at the last Board meeting a policy statement conveying support of the expansion of pharmacy technician duties to include administration of the influenza vaccination was approved. The adopted policy statement was included in the meeting materials and provided below in the minutes:

Policy Statement:

In recognition of the current COVID-19 crisis and consistent with the recommendations from health experts, including the CDC, on the importance of influenza vaccinations, the Board supports all efforts to facilitate influenza administration in a safe manner. Further, in recognition of the unique access patients have to community pharmacies, such locations provide a safe and convenient option to receive such vaccinations. The Board further believes that influenza vaccine administration may be safely performed by a specially trained licensed pharmacy technician under specified conditions listed below and as such supports efforts to secure such temporary authority under waivers during

the declared disaster, as well as a more permanent solution through statutory or regulatory changes.

President Lippe noted members as well as some public suggested it may be appropriate to allow pharmacy technicians to also administer other vaccinations. Because of limitations on the agenda, the Board was precluded from discussing the larger issue. Given the timing of the Board's supplemental report to the Legislature, Mr. Lippe noted he placed this item on the agenda to provide the Board with the opportunity to have the larger discussion, if members believe such a discussion were appropriate.

President Lippe recalled during the October meeting, Licensing Chair Veale walked the Board through all of the policy questions considered when developing its original recommendation to the Board. Mr. Lippe recommended starting with the fundamental question, "Does the Board believe it is in the best interest of California consumers for pharmacy technicians to administer vaccinations, if delegated by a supervising pharmacist?"

President Lippe noted Chair Veale advised the Board that Rhode Island appears to allow a pharmacy technician to be involved in the administration of adult immunizations in accordance with training requirements promulgated by the department of health. Further, Nevada, in response to COVID-19, amended authority to authorize a pharmacy technician with appropriate training to administer immunizations under the direct supervision of a pharmacist.

President Lippe opened the discussion for members.

Member Serpa spoke in support of the agenda item and moving forward with the policy statement. Dr. Serpa stated she believed pharmacy technicians providing vaccinations under the direct supervision of a pharmacist is in the best interest of public health and within the abilities and specified training. These duties would be similar to what pharmacy technicians do now preparing very complicated medication under the direct supervision of a pharmacist - including chemotherapy, nutritional products and complicated processes that are not as complicated as providing a vaccine. Dr. Serpa moved the policy statement be accepted.

Member Brooks seconded the motion.

Vice President Veale inquired if the policy statement was for influenza only or additional vaccines. Dr. Serpa clarified she intended to expand the policy to all vaccines authorized as being given by a pharmacist in California under the direct supervision of a pharmacist. Ms. Veale agreed with Dr. Serpa.

Member Butler expressed concern that this is moving too fast and should go through the process from Licensing Committee to the Board. Ms. Butler stated this was too much to put on the pharmacy technicians. She did not understand why this was being discussed now and not through the Licensing Committee.

Member Wong spoke in support of Dr. Serpa and supported discussing the issue further. Dr. Wong stated he didn't want it to become mandatory for the pharmacy technicians but rather an option if the pharmacy technician was interested.

Member Brooks spoke in support of the updated policy statement. He noted it is critical and important. Mr. Brooks didn't see any concerns for the public. He urged moving forward today.

Member Weisz stated he had concerns about a full suite of vaccines beyond COVID-19 and flu vaccines and expressed interest in hearing from pharmacy technicians. Mr. Weisz indicated he would like it to remain an option for pharmacy technicians and not be mandatory.

Member Sanchez spoke in support of Dr. Serpa's motion.

Member Oh stated he felt strongly about this as he is the only one that works in a community pharmacy setting and would be directly affected by this policy. Dr. Oh stated when an action by a person is authorized, the Board needs to look at all of the consequences of the decision. Dr. Oh stated this could actually harm the public. He expressed concern for extrapolating policy from a few states and agreed with Ms. Butler that this was going too fast. He stated concern for community pharmacists who are afraid to speak up because they are afraid of retaliation. Dr. Oh stated a statement needed to be added to the policy statement protecting pharmacists from being forced to supervise a pharmacy technician administering vaccinations.

Member Brooks asked to clarify if the issue was public protection or workload. Dr. Oh stated he believed directly public health is related to how and what pharmacists are allowed to do. When tasks are added to an already spread thin workforce without resources, it is directly related to public safety. He continued there needs to be protection or a statement not forcing pharmacists to do this. Mr. Brooks inquired if a cap on the number of shots a day would assist as public health and safety is paramount. Dr. Oh stated he believed a cap would not work if the pharmacists aren't given the resources and authority needed to do the job. Dr. Wong agreed he didn't want it to become mandatory or retaliatory. Mr. Lippe added once it is allowed, those running pharmacy operations may make it difficult for those if they don't agree to do it, and it is something to consider.

Member Patel stated consumer protection is the focus as the Board. Dr. Patel stated every person in California will benefit. Pharmacy technicians will be trained and this enables them to help every Californian. He stated he didn't agree that this could hurt consumers in any way but it is empowering pharmacy technicians to improve their professional skills and provide care to consumers. Dr. Patel stated he has seen this in his job in Nevada where seven technicians were trained and six are providing vaccines every day. They feel good about their careers and that they can help the pharmacist if the pharmacist is needed for a consultation or doctor's call. Dr. Patel stated he oversees 29 retail pharmacies and has 57 technicians and he asked each of the 57 technicians personally if they would be interested in training and providing immunizations if able. He reported 38 of 57 said they would be interested if it were approved. He noted seven technicians asked about advanced pharmacy technician certification. He added this is the second time this is being discussed and at the right pace in the right direction.

Member Butler understood Member Patel's experience with technicians; however, in her experience she has talked to more pharmacy technicians than Dr. Patel and they have a major problem with it. The Board's mandate is public protection and members have always discussed issues like this in Licensing Committee. Ms. Butler noted that only influenza was discussed in Licensing Committee. She stated pharmacists are overwhelmed with SB 493, PrEP and PEP, and doing the vaccines themselves. She stated the technicians she spoke with do not like this idea.

Vice President Veale clarified that the discussion today is about the policy statement and this enables the Board to put a policy statement out so that during COVID, we can potentially get a waiver put in place to allow technicians to provide influenza and COVID vaccines. Ms. Veale stated the statutory permanent change is going back to Licensing Committee. She noted she talked to a few technicians who liked the idea. She added it is at the discretion of the pharmacist. She agreed it would help the public and the pharmacist should have the right to say no to the concept or a technician. The Board can't protect the pharmacist from their employer; that is a discussion between the pharmacist and employer. Ms. Veale stated the pharmacists are professionals and need to stand up if they don't think it's appropriate or should not be delegated. She continued it is the pharmacist's responsibility to stand up and say no along with the technician. She stated this was an opportunity to help the pharmacist by removing the nondiscretionary task so pharmacists aren't spread thin. She spoke in support of making the policy statement and getting the waiver in place, which will allow for the Board to see how it will work in real life in addition to experience from other states.

Member Kim spoke in support of increase of access to healthcare including access to the flu and COVID-19 vaccine. She suggested Members Butler and Oh propose an alternative statement to the existing statement to clarify that this is an

optional authorization at the discretion of the pharmacist. She expressed interest in hearing the health impact for approving authorization for all vaccines.

Member Wong stated he supports expanding the profession but would like to see included that it not be mandatory and there be no retaliation for refusal and sufficient staffing is provided to implement.

Member Brooks inquired to counsel if the administration of the vaccine could not be done without training so if the pharmacist didn't want to do this, they could not do the training. Ms. Smiley confirmed that is correct as the pharmacist must delegate to the technician. Mr. Brooks inquired if there was a penalty for not doing it. Ms. Smiley noted not that she could think of offhand; however, there may be labor laws involved. Mr. Brooks stated he thought it was an opt-in in that the technician would have to take the training and the supervising pharmacist would have to delegate to the technician; he noted without those two parts, the vaccination could not be administered by a technician. Ms. Smiley added she didn't know if technicians could sign up for training outside of their employer.

President Lippe inquired if a pharmacist and technician went through training and only wanted to provide influenza or COVID-19 but don't want to be forced to give other vaccines. He continued, would it fall to the pharmacist to decide if they wanted the technician to go beyond the COVID-19 and influenza and it could also fall on the technician to not go beyond the COVID-19 and influenza. Ms. Smiley agreed that was correct for the supervising pharmacist but was unsure of labor law consequences if the technician were trained and didn't want to do it. State and federal labor laws would have to be reviewed. She thought most pharmacies and pharmacists who have legal liabilities for the execution of these vaccines are not going to want to take on the risk if the technician doesn't want to do it.

Member Oh stated he was not concerned about independent pharmacies but that his concern was with chain pharmacies. He stated he wished it was the case that pharmacists could stand up if they felt forced but that wasn't real world. He noted it wasn't the same for technicians as technicians are giving vaccinations under pharmacists' licenses. He added if possible he would like to add language that states that protects the pharmacist if the pharmacist does not want to perform these duties. He noted the Board needs to find a way when an action is authorized that the Board is letting them do it without any restriction.

President Lippe commented he didn't think the Board could add a protection within the authority. Ms. Smiley agreed as state and federal labor laws are involved and may not be legally effective.

Executive Officer Sodergren provided 16 CCR section 1793.3 as an example of current regulatory language that discusses when a pharmacist exercises

professional judgement. She noted in this section, there is a process established that could potentially leveraged to address some previously mentioned concerns. Ms. Sodergren provided 16 CCR section 1793.3 (c) and (d):

(c) A pharmacist who, exercising his or her professional judgment pursuant to subdivision (b), refuses to supervise the number of non-licensed personnel scheduled by the pharmacy, shall notify the pharmacist-in-charge in writing of his or her determination, specifying the circumstances of concern with respect to the pharmacy or the non-licensed personnel that have led to the determination, within a reasonable period, but not to exceed 24 hours, after the posting of the relevant schedule.

(d) No entity employing a pharmacist may discharge, discipline, or otherwise discriminate against any pharmacist in the terms and conditions of employment for exercising or attempting to exercise in good faith the right established pursuant to this section.

Members of the public were provided with an opportunity to provide comments.

Danny Martinez, CPhA, stated CPhA has a policy to support these tasks and would like the Board to consider the responsibility on the pharmacist and a shift of responsibility to the pharmacy technicians. He requested reverting back to the original policy statement of just influenza and think about adding protections for the pharmacist.

Lori Walmsley, Walgreens, stated the discussion is for the pharmacist's ability to delegate the activity to trained technicians to help to support the workload of the pharmacist. This will also help support the public and has been done safely in other states.

Lauren Manning, employed with Walgreens and working in the community setting for 25 years, stated this would be beneficial for those in community pharmacy. She worked in OH during the H1N1 pandemic and was actively involved in the administration to many patients. Her technicians were able to assist with the processing of paperwork but not the physical administration of the vaccines. She stated it would be very beneficial to allow the pharmacists to devote more time to the clinical role by providing consultations, ensuring patient adherence and more positive healthcare outcomes. She believes this would be well received by pharmacy technicians.

Leanne Snyder, with 20 years' experience working as a community retail pharmacist, commented she believes appropriately training specific technicians to draw up and administer vaccines under the supervision of a pharmacist will lead to improved patient care. She stated when a pharmacist is able to spend more time working at the top end of their clinical training by providing patients with quality consultations and education that patient safety and health outcomes ultimately improve. Most community pharmacists are overwhelmed, and this can

help the pharmacists so that more time can be spend in a clinical capacity. This will assist with the administration of COVID vaccines.

Paige Talley, CCAP, commented she has anecdotal information about chain stores requiring pharmacists to provide vaccines. Ms. Talley agreed with Members Butler and Oh and CPhA of doing the influenza only at this time. She inquired how a pharmacist can provide consultation while giving direct oversight of a pharmacy technician administering a vaccine. Counsel Smiley referred to BCP section 4023.5 for "direct supervision and control" means that a pharmacist is on the premises at all times and is fully aware of all activities performed by either a pharmacy technician or intern pharmacist.

Kayla McFeely, NACDS, commented in support of the concept for technicians to administer vaccines including and beyond influenza. She noted an urgent need to leverage all qualified immunizers. HHS provided guidance authorizing pharmacy technicians to administer recommended pediatric vaccines and COVID-19 vaccines. Ms. McFeely reported on the trend in many states. She cited an interview of a supervising pharmacist in Idaho who stated having the technician to help with vaccinations allows the pharmacist to spend more time on tasks that require clinical judgment.

Jassy Grewal, UFCW Western States Council on behalf of thousands of pharmacists and pharmacy technicians, commented in opposition to expanding the pharmacy technician scope to include administering vaccinations. She stated this needs to be discussed at Licensing Committee as there is a surplus of pharmacists to be used first before technicians. She stated there is no statutory authority. She stated an apples-to-apples comparison of training requirements and programs in the state must be done. Pharmacists need strong anti-retaliation protection in the form of a rebuttable presumption to protect from corporate pressure in chain retail pharmacies. Ms. Grewal read a statement from a pharmacy technician afraid of workplace retaliation but was told as a pharmacy technician will be required to administer COVID vaccine when available to the public and didn't have the training to do so.

Eric Robles, United Nurses Association of California Union of Healthcare Professionals representing both pharmacists and nurses, agreed with concerns that the policy has gone from influenza to expanded practice of technicians. He noted there are many pharmacists who need to work and can do this. He stated there are patient safety concerns as well. He stated the opt-in policy becomes a factor in hiring a future employee.

Rob Geddes, Albertsons/Safeway, spoke in support and noted as the company has been allowing it for four years. He stated the influenza vaccine is provided by an injection by intramuscular route. He noted once you have been trained in this technique there is no additional training required as you apply the same

technique. In the four years participating in this task in states where allowed, he noted Albertsons/Safeway always allowed the pharmacist to retain delegation and always allowed it to be done on a voluntary basis. He noted they would be using the same approach in California if approved.

Mark Johnston, CVS Health, stated during the promulgation of 16 CCR section 171.3, testimony was heard wanting relief for pharmacists. He noted each vaccine done by a technician saves the pharmacist three minutes. He recommended to provide sufficient staffing by exempting this duty from ratio, increase ratio or allow unlicensed staff to perform the simple task of immunization. Childhood immunizations are allowed in California by HHS guidance which preempts state law. He noted one reason was childhood vaccinations in California were down 40% at the beginning of the pandemic. He noted APHA supports this. He stated he believed it could be addressed in regulation and not statute.

Steven Gray, CSHP, confirmed the discussion is about a policy statement. CSHP supports the policy statement. He agreed with the previous commenter that many children and adults are getting hurt by not getting the non-flu/non-COVID vaccines needed. He noted the pharmacists would also be required to receive the proper training and education. He agreed with Executive Officer Sodergren's citation of 16 CCR 1793.3 as a potential model for language and referenced BPC 4115 (f) (3) that talks about the protection of the pharmacist not comfortable in supervising a second technician. While it is not directly on point, there are examples that can be used as a model. Dr. Gray stated the Board should move forward with a policy statement and then go back to the Licensing Committee to discuss making it permanent and discuss language.

Jessica Langley spoke in support of the policy on behalf of the Coalition for the Advancement of Pharmacy Technician Practice. She referenced a petition signed by pharmacy technicians on the Coalition's website to provide a voice for pharmacy technicians who support the efforts of the Coalition including this one.

The Board took a break at 10:27 a.m. and returned at 10:37 a.m.

Roll call was taken. Board Members present: Maria Serpa, Jignesh Patel, Jason Weisz, Shirley Kim, Ricardo Sanchez, Seung Oh, Lavanza Butler, Debbie Veale, Ryan Brooks, and Greg Lippe. A quorum was established.

Counsel Smiley commented that some public comments reference technicians would be able to give vaccines pursuant to federal law and declaration by the federal Department of Health and Human Services. Ms. Smiley noted that a part of California Constitution, Article 3, Section 3.5 states an administrative agency

which would include the Board has no power to declare a statute unenforceable or refuse to enforce a statute on the basis of it being unconstitutional unless an Appellate Court has made a determination that such statute is unconstitutional. Therefore, under California law, if a pharmacy technician was doing a vaccine not authorized under California law, the Board would not be able to defer to any type of preemption or unconstitutional analysis unless it was decided by an Appellate Court.

Executive Officer Sodergren further clarified Ms. Smiley's statement that because of the provisions in California's constitution, there is not an automatic preemption over state law as some have inferred during public comment. Ms. Smiley clarified the Board cannot make that determination in the absence of an Appellate Court decision.

President Lippe inquired if a waiver could be done. Ms. Smiley agreed the waiver is giving protection under California law to do that. Executive Officer Sodergren clarified the Board could not do a waiver but the Board could leverage a policy statement to request a waiver from DCA.

Motion: Amend existing policy statement to expand it to include vaccines that are able to be administered by a pharmacist in CA.

M/S: Serpa/Veale

Member Butler inquired if this included protections for the pharmacist. Ms. Veale noted this is the policy statement to allow the DCA waiver to be sought; the statutory language will go back to the Licensing Committee.

Member Weisz inquired what would happen if the motion passed and recommended starting with influenza and COVID-19. Ms. Veale provided this is the policy statement so that the Board can pursue a DCA waiver in place to take care of flu and COVID-19. The DCA waiver is temporary. She advised the more permanent solution will go back to Licensing Committee. Mr. Weisz inquired if the policy statement would allow for a DCA waiver for only influenza and COVID-19. Ms. Veale clarified the current motion positions the Board so that the Administration can consider whether to grant a waiver and other vaccines allowed for administration by pharmacists. Dr. Serpa noted if the motion is voted down, the policy will remain for only influenza. Mr. Weisz inquired if it could be changed to influenza and COVID. Ms. Smiley stated the current motion must be voted.

Support: 5

Oppose: 6

Abstain: 0

Not Present: 0

Board Member	Vote
Brooks	Support
Butler	Oppose
Kim	Oppose
Lippe	Oppose
Oh	Oppose
Patel	Support
Sanchez	Support
Serpa	Support
Veale	Support
Weisz	Oppose
Wong	Oppose

Motion: Amend existing policy statement the Board adopted to include expand it to COVID-19 vaccine subject to the same conditions if delegated by a supervising pharmacist.

M/S: Weisz/Veale

Members were provided with an opportunity to provide comments; however, no comments were made.

Members of the public were provided with an opportunity to provide comments; however, no comments were made.

Support: 8

Oppose: 3

Abstain: 0

Not Present: 0

Board Member	Vote
Brooks	Support
Butler	Oppose
Kim	Support
Lippe	Support
Oh	Oppose
Patel	Support
Sanchez	Support
Serpa	Support
Veale	Support
Weisz	Support
Wong	Oppose

IV. Review and Consideration of Draft Supplemental Sunset Report

President Lippe noted Board's Sunset Review hearing was held on November 18, 2020. In response to the Sunset Hearing, the Board will need to respond to several items included in the oversight background paper. The response to those items will be due 30 days from the day of the hearing. Mr. Lippe hoped to schedule a Board meeting to review and finalize our responses in mid-December.

Members were provided with an opportunity to provide comments.

Member Brooks had no comments.

Vice President Veale requested the biographies of the Board Members be updated.

Member Butler appreciated the note for being out on disability.

Member Oh requested a check for typographical errors.

Member Sanchez had no comments.

Member Kim requested the biographies of the Board Members be updated.

Member Weisz had no comments.

Member Serpa inquired of the pharmacist fees in Appendix 9. Ms. Sodergren provided a final validation will be done.

Member Patel thanked the staff who contributed to put the report together.

Member Wong had no comment.

President Lippe had no comment.

President Lippe clarified he and Executive Officer Sodergren testified November 18th and there are number of outstanding issues to respond.

Executive Officer Sodergren provided an overview of the process. The Board submitted the Sunset Report in December 2019. The hearing was scheduled for March 2020 but was cancelled due to the pandemic. In October 2020, the Board received a request to provide supplemental report and that report is due on December 1, 2020. The Sunset Hearing was scheduled for November 18, 2020, before the supplemental report was due. Separate from the supplemental report in response to the Sunset

Hearing, the Board has 30 days to respond to all of the issues raised in the background paper prepared by committee staff at the Capitol.

Executive Officer Sodergren wanted to ensure the Board is adequately telling the Board's story with respect to COVID-19. There may be concerns Board is not taking action in other areas and the Board must make sure it is adequately telling the Board's story. Ms. Sodergren offered the suggestion of providing more detail in the president's letter or additional detail in context to clearly delineate the good work the Board has been doing.

Member Butler inquired if as a result of the meeting should the Board have another meeting. Ms. Sodergren explained several of the issues raised in the background paper are policy related and appropriate for the full Board to deliberate. Board staff may offer recommendations but it is a policy issue best responded to by the Board. Ms. Sodergren explained all issues in the background paper require a formal response from the Board.

Members discussed options for preparing and reviewing the background paper response. Based on her Sunset experience, Vice President Debbie Veale's participation was discussed. Member Brooks inquired if the Board would run into issues with Members being on their grace year. Ms. Veale indicated she is on her last year, not grace year.

Member Butler inquired about the report submitted in the meeting materials. Ms. Sodergren clarified the report was drafted by staff for Board comment.

Motion: Delegate one Board Member to work with staff to finalize report response by December 1, 2020. Vice President Debbie Veale was selected based on her experience with the Sunset process.

M/S: Oh/Patel

Members were provided with an opportunity to provide comments; however, no comments were made.

Members of the public were provided with an opportunity to provide comments.

Paige Talley, CCAP, inquired about the hospital licensing categories on page 6 of the original Sunset report submitted in 2019 and the discussion on the make up of the Board. Ms. Sodergren offered to have Ms. Talley email her directly. Ms. Talley inquired about the make up of the Board; questions were directed to Ms. Sodergren.

Support: 10

Oppose: 0

Abstain: 1

Not Present: 0

Board Member	Vote
Brooks	Support
Butler	Support
Kim	Support
Lippe	Support
Oh	Support
Patel	Support
Sanchez	Support
Serpa	Support
Veale	Support
Weisz	Abstain
Wong	Support

President Lippe stated the next meeting is scheduled for December 3, 2020.

The meeting adjourned at 11:26 a.m.