



COURT REPORTERS BOARD OF CALIFORNIA

2535 Capitol Oaks Drive, Suite 230, Sacramento, CA 95833
Phone (916) 263-3660 / Toll Free: 1-877-327-5272
Fax (916) 263-3664 / www.courtreportersboard.ca.gov



COURT REPORTERS BOARD OF CALIFORNIA MINUTES OF OPEN SESSION MAY 26, 2016

CALL TO ORDER

Ms. Davina Hurt, chair, called the meeting to order at 10:37 a.m. at the Department of Consumer Affairs HQ2, 1747 North Market Boulevard, Hearing Room, Sacramento, California.

ROLL CALL

Board Members Present:

Davina Hurt, Public Member, Chair
Rosalie Kramm, Licensee Member, Vice Chair
Elizabeth Lasensky, Public Member
John K. Liu, Public Member
Toni O'Neill, Licensee Member

Staff Members Present:

Yvonne K. Fenner, Executive Officer
Norine Marks, Senior Staff Counsel
Fred Chan-You, Staff Counsel
Paula Bruning, Executive Analyst

A quorum was established, and the meeting continued.

I. MINUTES OF THE APRIL 6, 2016 MEETING

Ms. Lasensky requested that the word "contacts" be changed to "contracts" in the third line of the last paragraph on page 8 of the minutes. She then requested the word "like" be changed to "liked" in the first line of the second paragraph under the heading "Approval of Communication Plan" on page 12 of the minutes. Lastly, she asked that the word "work" be changed to "word" in the first line of the fourth paragraph under the heading "Update on Sunset Review" on page 13 of the minutes.

Ms. Kramm moved to approve the minutes as amended. Ms. Lasensky seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Ms. O'Neill, and Ms. Hurt.
Opposed: None
Absent: None
Abstain: Mr. Liu
Recusal: None

MOTION CARRIED

II. LEGISLATION

A. Update on Proposal to Seek an Increase of the Licensee Fee Cap

Ms. Fenner reported that language to increase the Board's license fee cap from \$125 to \$250 was included in SB 1039 (Hill), an omnibus bill. She recommended the Board take a position of support. Ms. Hurt added that the Board was previously unsuccessful in obtaining an author for a fee cap increase; therefore, she expressed her appreciation of Senator Hill's inclusion of the language and supported the recommendation of staff.

Ms. Lasensky moved to instruct staff to write a letter in support of the legislation.

Ms. O'Neill stated that she remembered there previously being language about the Transcript Reimbursement Fund (TRF) in this bill. Ms. Fenner responded that staff is continuing to work with the consultants from the sunset review oversight committees to find the best vehicle for the TRF.

Ms. Kramm conveyed her appreciation for Senator Hill's inclusion of the language.

Mr. Liu seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Mr. Liu, Ms. O'Neill, and Ms. Hurt.

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

B. Status of Bills relevant to the Board

Ms. Fenner stated that all the bills being tracked by the Board were included in the report in the Board agenda packet. She added that the bills that need attention were highlighted by three asterisks, and she reported on them individually.

AB 1834 – Ms. Fenner reported that the Assembly Judiciary Committee granted reconsideration of AB 1834 (Wagner); however, no changes were expected. Previously, the chair of that committee, Mark Stone, indicated that he would vote “no” on this bill unless it was amended to include funding for court reporters in family law matters. Staff will continue to watch the bill.

AB 2192 – Ms. Fenner related that AB 2192 (Salas) (previously Bonilla) is the sunset bill that would extend the Board. Since the chair of the Assembly Business and Professions Committee changed from Bonilla to Salas, the author changed for the bill. Under direction from the Board, staff sent a letter of support with the Board chair's signature.

AB 2629 – Ms. Fenner stated that AB 2629 (Hernandez), sponsored by the California Court Reporters Association (CCRA), seeks to increase the statutory rates that

reporters may charge for official transcripts. Ms. O'Neill added that the current rates went into effect January 1, 1991.

Ms. O'Neill recognized the need to have a rate that would fairly compensate reporters who are willing to produce transcripts, but suggested the Board take a neutral position on the bill as a consumer protection entity. Ms. Hurt agreed, adding that it would be equitable to increase rates to prices that are current for today's market.

Mr. Liu asked how the market rate or cost of living was determined. Brooke Ryan, CCRA president, and CCRA lobbyist, Ignacio Hernández of the Hernández Strategy Group, approached the Board. Mr. Hernández responded that the rates were set at less than that of a cost of living adjustment based on discussions with legislative representatives and what they thought would pass. He added that the bill was in suspense with the Assembly Committee on Appropriations.

Mr. Hernández reported that the California Judicial Council was prepared to take an "oppose unless amended" position, in part due to the cost that is incurred by the court itself. During the most recent fiscal year, however, the cost of the transcripts to the court decreased by \$2 million. He believed that the decrease would offset the additional cost of the initial increase. One requested amendment includes increased use of electronic recording.

Ms. Ryan stated that the Los Angeles County Superior Court is having a very hard time getting officials into their court house and needs people to apply. The court laid off so many civil court reporters who are now refusing to return to court and the old transcript rates because they are making a lot more money in the freelance arena. It is creating a serious problem on the horizon that could help Judicial Council with their argument to put in electronic recording. They are in contract negotiations now, but the 25-year-old statute rate is going to create the biggest problem.

Mr. Liu recognized the complex tension of having a consumer pricing issue plus the need to have a rate that can support professionals. He supported the concept of moving to a market rate because there otherwise would not be the necessary professionals to meet California's needs.

Ms. Kramm believed making a cost of living adjustment to be a fairness issue since the cost of producing a transcript has increased. She indicated that the problem in Los Angeles mentioned by Ms. Ryan was also happening San Diego, and staffing was becoming more difficult with the old rates. She asserted that the new rates would make it fairer for both the court reporter and the consumer. She pointed out that transcription of electronic recordings was going to be much higher than the rate increase being sought.

Mr. Liu inquired if the calculation method was reviewed by Judicial Council. He stated that cost of living adjustments are not meant to achieve prices that are driven by profit, but prices driven by cost of living. Mr. Hernández confirmed that discussions with Judicial Council took place early on, and they were aware of the calculations. Mr. Liu reiterated that the courts will ultimately face market prices and delays as a result of not supporting a cost of living adjustment.

AB 2859 and SB 1195 – Ms. Fenner discussed AB 2859 (Low) in conjunction with SB 1195 (Hill). SB 1195 addresses some concerns that resulted from the anti-trust matter in North Carolina. One possible ramification of that bill would be prohibition of licensees being the executive officer of any of the boards. AB 2859 would allow Department of Consumer Affairs (DCA) programs to establish a retired license status. The Board's practice act already gives the ability to create a retired category, but it would require a regulatory package. If licensees are prohibited from being an executive officer, there may be an allowance for an inactive or retired status individual to serve as the executive officer.

Ms. Kramm inquired as to the intent of SB 1195. Ms. Fenner responded that she believed the author was attempting to protect the boards and members from any type of anti-trust violations. Ms. Kramm asked if Ms. Fenner believed AB 2859 to be the solution that would allow that protection and simultaneously not force board directors to give up their license. Ms. Fenner answered that it would for other boards, but the Court Reporters Board already has that ability through regulation. She stated that the regulatory process would take approximately one year.

Mr. Liu inquired if a retired status licensee would be allowed to "un-retire." Ms. Fenner said that would have to be developed during the regulatory process.

Ms. Hurt asked if the Board wanted to develop a letter to the DCA Director regarding how SB 1195 affects this Board.

Ms. O'Neill found SB 1195 troublesome since the Board has a very good executive officer who is a licensee and has the industry knowledge that makes her effective. Mr. Liu added that it is best for the people of California to have institutions populated by people with experience with the matter. If there is not a retired category, the people of California will not be as well-served.

Ms. Lasensky agreed that Ms. Fenner is excellent, but cautioned that a different scenario with a future licensed executive officer who is biased toward the industry could leave the Board vulnerable. She expressed the need to have the public feel well-served, but also to avoid any appearance of bias.

Mr. Liu suggested that there be contingencies put in place that prohibit retirees in public positions to reactivate for a specified amount of time after leaving the position to avoid a conflict of interest. He stated that AB 2859 appeared to enable boards to self-determine these details depending on the needs of their board.

Ms. O'Neill shared that when attorneys become judges, the State Bar suspends their license and does not allow them to practice law. Upon retirement, they can apply for reinstatement.

Ms. O'Neill added that as a result of Proposition 47, reporters are receiving requests for transcripts of pleas and sentencings from many years ago including the 1990s. She suggested that the retired status allow reporters to sign transcript certifications for hearings they reported while actively licensed.

Mr. Liu moved to instruct staff to write a position letter regarding SB 1195 to add color to the appropriateness for some boards to have the ability to have a retired or inactive status to be exempted from particular requirements. Ms. O'Neill seconded the motion. Ms. Hurt called for public comment.

Kurt Heppler, DCA Senior Staff Counsel, inquired if the motion was in regards to AB 2859. Ms. Hurt clarified that it was in regards to SB 1195. Mr. Heppler suggested that the Board send its concerns to the author. Ms. Fenner stated that the DCA Director is working actively with the author on the language, and she suggested that she reach out to the DCA Legislative Unit to inquire as to the protocol.

Amended Motion: Mr. Liu moved to instruct staff to draft a position paper regarding SB 1195, explaining its point of view on this matter, and delegate to the executive officer the addressee of the letter. Ms. O'Neill seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Mr. Liu, Ms. O'Neill, and Ms. Hurt.

Opposed: None

Absent: None

Abstain: None

Recusal: None

MOTION CARRIED

SB 270 – Ms. Fenner indicated that SB 270 (Mendoza) has not officially been amended; however, the Board was provided with a mockup of proposed amendments for discussion.

Mr. Hernández reported that many discussions took place with the author's office, opponents, and other interested parties. He stated that the draft before the Board is a working document and not the final draft. He expected the bill to be heard sometime in June before both the Assembly Business and Professions Committee and the Assembly Judiciary Committee. He asserted that final language would be ready in the next week.

Mr. Liu suggested the concept of registration include remaining in good standing to ensure proper professional conduct is present. Additionally, he asked that the language defining foreign professional corporation be expanded to include international corporations. Mr. Liu shared his concern over regulatory deviation and desired to see a level playing field. Mr. Hernández responded that he would take the suggestions and report back on the outcome.

Ms. Hurt inquired if the sponsor had worked with the Office of the Attorney General (AG). Mr. Hernández responded that they had been included in discussions. He expected feedback from interested parties until the committee hearings.

Ms. Kramm recommended limited liability company be included as a form of business entity. Mr. Hernández responded that a newer draft of the language includes other business entities.

Ms. Lasensky asked how the Board would fulfill the requirement of section 8040.2(b), wherein an examination would be required to determine whether a designated representative of a court reporting firm understands the ethics and professional conduct required for the practice of court reporting. Ms. Fenner responded that the Board would develop these types of procedures through the regulatory process. She suggested the examination would be similar to the current professional practice examination.

Ms. Kramm stated that she was required to take a test regarding Nevada rules in order to register her company in Nevada. Mr. Hernández shared that the provision was modeled on the Nevada law.

Ms. Hurt requested that Mr. Hernández articulate how the bill is structured to give penalties to entities who do not register. Mr. Hernández answered that the language clarifies that the Board has the authority to pursue actions and impose fines, penalties and injunctive relief through the AG's Office against individuals and business entities operating in California without proper authority.

Mr. Liu thanked Mr. Hernández for his efforts on the bill.

Mr. Hernández added that discussions with opponents of the bill will continue, although he was under the impression that the opponents planned to kill or delay the bill. Ms. Hurt stated that she and Ms. Fenner participated in a discussion with U.S. Legal and legislative and industry association representatives in an attempt to remedy opposition. She found it evident that the opponents were putting up hurdles to the bill.

Ms. Lasensky asked if the Board could take a position on the language without final language. Ms. Fenner responded that the Board cannot take a position on the bill, but individuals could contact the author's office in support of the amendments.

Ms. Lasensky moved to direct staff to notify the author that the Board is in support of the amendments to this legislation. Mr. Liu seconded the motion. Ms. Hurt called for public comment.

Mr. Hernández stated that some entities provide letters of support in concept with a caveat that the support is withdrawn if the language changes and asked the Board to consider doing such.

Ed Howard, on behalf of the Deposition Reporters Association (CaIDRA), opposed the motion. He asserted there are seven noteworthy flaws in the language that do not meet the requirements set by the Board at its April 8, 2016 meeting and reflected in the minutes on page 22 of the Board agenda packet.

Mr. Howard began by referencing the language in the Business and Professions Code (BPC) 8040(a), which defines a shorthand reporting corporation as one that is 100 percent owned by licensees, including its director and employees. He stated that the proposed changes do not show a need for a shorthand reporting corporation where all officers and directors must be licensees because another corporation could compete by simply designating an individual who does not have a specified role or duty under this language in the corporation and who does not have to be licensed. The designee has nothing to lose as compared to a licensed court reporter that runs a corporation who

could lose his or her livelihood. The question was raised as to why move to a model where non-licensees can be designated employees or corporations and asked what point remained in having a definition of shorthand reporting corporation.

Mr. Howard then moved to BPC section 8040(b)(3). He described the section as an important provision which is paralleled in Moscone-Knox. He stated that the reference to "official court reporter" was erroneous since official reporters are employees of courts. He then focused on the phrase "arranging for services." The current law uses the term "render professional services." He indicated that at its last meeting, the Board required the amendments to include a definition of "professional corporation," stating that the Board has a problem in applying and enforcing current law. U.S. Legal and other corporations insist they do not render professional services. The amendments to the bill do not define professional services and add a new question of what "arranging" for services means.

He added that the next line also includes the word "arranging" when referring to the billing for services, but again does not define "arranging." He stated that the corporations do the billing themselves and that there is not statute or regulation that regulates fees for non-official reporters.

The fourth item Mr. Howard raised was found in BPC section 8040(c)(1), where the new term "providing" was introduced. The Moscone-Knox language uses the word "rendering." The amendments to the bill use "arranging."

Mr. Howard moved to Section 2 of the amendments, referencing BPC section 8040.1(a), wherein the language uses the undefined words "render" and "arrange." The language used in the amendments is almost verbatim to that of the Nevada law. The amendment is a laudable attempt to get around defining professional services by saying registration is required for anyone advertising or holding oneself out to render services. Again, the word "render" is problematic. The Superior Court reinforced this point in the Holly Moose case wherein the decision underscores that the corporations believe they are not rendering services. The requirement would have only licensee-owned corporations registering, which does not create the level playing field referenced by Mr. Liu.

The Nevada law does not have the same problem because their code 656.030 defines a court reporting firm in part as a firm that "provides referral services to court reporters in this state." The amendments that mirrored part of the Nevada law left out the part the Board requested. There is a powerful provision in the Nevada law through its regulation that prohibits individual licensees from working for a court reporting firm that is not registered in the state. By providing an incentive to register, Nevada avoids the type of litigation facing California's Board.

Mr. Howard referred to BPC section 8040.1(d), stating that the amendment does not require the applicant or designee to be a licensed court reporter, which is in contrast to what the Board requested at the last meeting. He added that all other professional entities under DCA require the designee to be licensed in order to have a clear authority over the person. The amended language also does not require that the designee be a manager or supervisor. He suggested language similar to what the Pharmacy Board uses for "Pharmacist in Charge."

Mr. Howard shifted to Section 3 of the amendments, BPC section 8040.2(b), where he asserted that the deadline of July 1, 2017, was not realistic. He stated that the amended language lacks a requirement that the designated representative be a California resident. This may lead to litigation in other states or in federal court.

Mr. Howard questioned what would happen if the designee was revoked. He proposed that a corporation could have three or four people ready to switch in. He concluded by stating that the preceding seven flaws were the largest, but that more minor drafting issues existed.

Ms. Hurt asked Mr. Howard if he had been working with Mr. Hernández on the points he raised. Mr. Howard responded that he had only received the language two days prior and had participated in a conference call the night before the meeting to go through it line by line.

Mr. Howard added that CalDRA supported SB 270 in the beginning as it attempted to work within the four corners of existing law to make enforcement for the Board easier. It then migrated to an effort to entirely rewrite the corporation practice of court reporting in the largest state of the United States.

Mr. Howard indicated that similar issues are facing other license boards and shared the efforts being made to revise how the corporate practice of medicine is done. In that case, the California Senate Business, Professions and Economic Development Committee commissioned a California Research Bureau Report that surveyed how corporate practice of medicine was done in 50 states. They then held an informational hearing on May 2, 2016, with experts on corporate practice of medicine before trying to figure out how to rewrite the laws. Mr. Howard added that the California State Bar is currently engaged in a discussion about how to change their governance structure. The Bar was required by the Legislature to create the Governance in the Public Interest Task Force, which has been meeting regularly for more than a year. It has engaged experts in corporate governance and on a whole host of issues.

Mr. Howard commended CCRA for pushing forward the question of corporate practice. However, given the significance of the issue, he stressed the importance of doing the research first and then making commitments. He reiterated that the Board asked for the designee to be a manager and for research from other states to be done.

Mr. Hernández reiterated that the amended language before the Board was a working draft, not the final draft. He stated that CCRA has a newer document they are working off today. He welcomed suggestions on the bill and stated that his staff was watching the Webcast and taking notes. He restated that he did not come seeking a motion supporting the bill because the language is not done yet. He assured the Board that most of the points raised by Mr. Howard were already addressed in the new draft, but the internal draft had not yet been made available to the public.

Mr. Hernández commented on the meeting previously mentioned by Ms. Hurt. He stated that a variety of parties were present, including representatives of U.S. Legal and CalDRA, in an effort to finalize the discussions on the bill using the same draft before the Board. He had hoped to receive the suggested amendments outside of a public meeting.

Mr. Hernández expressed his belief that the issue needed to be addressed now and not delayed as suggested by the other witness. He stated that changes will be made and forwarded to the Board in a new draft in the coming week. He added that his office had just received the Superior Court decision in the Holly Moose case and had taken the issues raised into consideration.

Ms. Hurt commented on the motion on the table. She stated that the Board's AG has publicly supported firm registration. She cautioned the Board to be careful with what it supports and how the language is managed. Although she did not agree with all of the findings of Mr. Howard, she was apprehensive to support a bill that is not in its final draft. She applauded CCRA on the work they are doing.

On request of the Board, Ms. Bruning repeated the motion. Ms. Lasensky asserted that the motion was a support in concept with the full knowledge that the Board does not have final wording. She questioned how the Board could convey its general agreement on the concept. Ms. Hurt stated that she did not believe it was necessary to make a motion to support the concept. She said it was the Board's pleasure if they would like to take the extra step to submit a formal written support of the concept, which would be based upon the language available.

Ms. Kramm expressed that the word "concept" was problematic for her. She indicated that the Board stated its support of the bill to the Sunset Review Committee and Senator Mendoza under previous amendments. She believed it dangerous to take a position on the language in its current form since the final language may be different. Ms. O'Neill agreed with Ms. Kramm and applauded the associations for working toward an end result.

Ms. Lasensky withdrew the motion.

SB 1007 – Ms. Fenner reported that SB 1007 (Wieckowski) deals with arbitration rulings that may be vacated depending upon whether a party's rights were prejudiced by the refusal of the arbitrator to allow the party to have a certified court reporter transcribe any deposition, proceeding or hearing as the official record. She stated that staff recommended support of the bill.

Ms. Kramm stated that the American Arbitration Association (AAA) and Financial Industry Regulatory Authority (FINRA) rules dictate that their proceedings be tape-recorded and maintain that the court reporter is only there as a notetaker. She stated that it is unfair that a tape recording be used as an official record when arbitrators are the ones turning it off and on. With rustling papers and other background noises, there is no way to make a good record. She asserted that it is good for the people of California and all litigants in arbitration to be able to have an official record from a court reporter if they choose to pay for one. Ms. Fenner confirmed that the law would cover arbitrations held by AAA and FINRA. Ms. Kramm believed the Board should support this bill.

Ms. Lasensky believed that not having the court reporter in arbitration created an unfair playing field and so supported the bill. Ms. Hurt added that having the court reporter present is a way of protecting consumer appeal rights.

Ms. Kramm moved to write a letter in support of SB 1007. Ms. Lasensky seconded the motion. Ms. Hurt called for public comment. No comments were offered. A vote was conducted by roll call.

For: Ms. Kramm, Ms. Lasensky, Mr. Liu, Ms. O'Neill, and Ms. Hurt.

Opposed: None

Absent: None

Abstain: None

Recusal: None

The Board took a break at 12:11 p.m. and returned to open session at 12:28 p.m.

III. REPORT OF THE EXECUTIVE OFFICER

A. CRB Budget Report

Ms. Fenner provided a brief update to the expenditure projection as reflected on page 96 of the Board agenda packet. Ms. Hurt commented that the second largest expense for the Board is the pro rata line item next to salaries. It is essential that we make good use of services at every turn. Ms. Fenner indicated that Ms. Bruning continually looks for ways to further the Board's strategic plan through the services and resources offered by DCA that are covered by pro rata.

B. Transcript Reimbursement Fund

Statistical information was included in the Board agenda packet on page 98, but was not commented on during the meeting.

C. Exams

Ms. Fenner indicated that the historical examination pass rates are included in the packet as usual. In addition, a statistic sheet for the March 2016 dictation examination was included on page 105 of the Board agenda packet. This examination sparked controversy and discussion since the overall pass rate was under 10 percent with a significant difference between the overall and first-time pass rates. Historically, there is a large difference in the two rates. Staff believes this is in large part because it is a skills driven test. Ms. Fenner compared machine practice to preparing for a marathon. A runner would not wait until the week before the race to start running, but would train to become faster over time. Unfortunately, candidates are not returning to school, writing on their machines, transcribing notes, and maintaining or improving their skills. The overall pass rate is highly driven by the number of repeat candidates. The Board can only suggest to them that going back to school or participating in a practice program would benefit them and improve their skills.

Ms. Hurt pointed out that there was a high number of repeat candidates compared to first-time takers at the March 2016 dictation examination. Ms. Fenner added that a low number of first-time candidates skews the overall pass rate, and with such low numbers of overall candidates, one or two individuals can make a significant change to the overall rates.

Ms. Fenner stated that the low number of first-time candidates may be reflective of low enrollment at schools, which may be a concern for the Board when considering potential workforce issues in the future.

Ms. Fenner indicated that the dictation examination has been put together by the same people for many years. It is not a new group trying to make it more difficult. The words included are standard, entry-level words counted out by syllable and timed. The exit surveys are overwhelmingly positive, so there does not appear to be a way to improve the test.

Ms. Fenner shared that information online and in e-mail form from working reporters stating that punctuation on transcripts is optional and should not be graded on the examination. Although it would be contrary to current policy, the Board could pursue changing the way the examination is graded. Currently, punctuation is graded for what is required. If there is any type of style choice, it is not graded as an error. For example, in a place where one could use a comma or a semicolon, it is not graded as an error; however, an erroneously missed or inserted period would be counted as error.

Ms. Lasensky stated that punctuation tells so much. Mr. Liu agreed, adding that in the context of legal arguments, punctuation is important. Ms. O'Neill believed the Board's current grading policy with respect to punctuation is more than fair.

Ms. O'Neill added that the reporters in her court receive an annual evaluation which includes a review of transcripts. In addition, the pro tem reporters are required to turn in work samples. The reviews have confirmed a problem with the quality of the punctuation. She realizes court reporting programs are challenged to find a way to remedy the problem considering that there is often a deficit in punctuation knowledge and skills for new students.

Ms. Kramm shared that she has asked newer reporters to correct the punctuation of their transcripts. Some have actually questioned her as to why they would need to do so. In addition, she has spoken with scopists who claim reporters are leaving the punctuation out of their stenographic notes to write faster. She expressed that this is a bad habit and does not want the profession to become a commodity where "good enough" is the standard. Poor punctuation reflects upon the whole profession, and she suggested people respect punctuation.

Ms. Hurt inquired as to the mandate of court reporting schools. Ms. Fenner responded that the Board is charged with overseeing court reporting programs and grants recognition of programs that fulfill the application process and initial requirements. The Board must then ensure the curriculum complies with what is set out in regulation. Schools must also comply with such things as the required qualifications of instructors and recordkeeping.

Ms. Hurt asked when was the last time the schools were visited and reviewed for curriculum. Ms. Fenner said it has been many years as a result of budgetary restrictions. However, a team has been created with an expert consultant as its leader to begin site visits in the near future.

Ms. Lasensky recognized there are two parts to the issue, one being the examination with punctuation, and the other is working reporters who are not following punctuation. She suggested the Board address the licensed reporters via a newsletter article or the like.

Ms. Kramm acknowledged that two of the new reporters she is working with are doing an excellent job with speed, punctuation and everything else. She shared that she recently wrote a blog piece about seven suggestions for new reporters. Ms. O'Neill asked if the Board could reprint it in the CRB Today newsletter. Ms. Kramm offered to expand on the article for the newsletter.

Mr. Liu agreed that a best practice document would be beneficial to address the issue with current reporters. He inquired if schools are analyzing the examination results to understand where curriculum needs should be focused. Ms. Fenner responded that curriculum is different than the skills portion. With curriculum you go back to study, but with skills you need to practice. Mr. Liu suggested the Board issue guidance, such as a minimum number of hours a day needed for practice. Ms. Fenner responded that the results letter that goes to candidates who do not pass the examination includes information on how to reapply and a paragraph about the importance of practice at school or via another practice program.

Ms. O'Neill said she reads a lot of court-reporter-related Facebook pages to keep a pulse on the industry. She noticed several threads in the past few weeks about people not passing the dictation examination. The responses have been supportive of practicing three to four hours a day.

Ms. Lasensky asked if the candidates get something that shows the number of errors made if they fail. Ms. Fenner indicated that the candidates may request a copy of their transcript where they can see the grading.

Ms. Hurt requested that staff work with Ms. Kramm on an article for the newsletter. Ms. Kramm invited CCRA and CalDRA to create a video of reporters who have passed to be cheerleaders for students.

Karly Powers, chair of the CCRA Support Our Students Committee, shared that she had also received many e-mails regarding the last dictation examination. She stated that CCRA is working internally to promote students to pass the exam. She reported that teachers are also frustrated, but doing the best they can with what they have.

Ms. Powers asserted that there is a disconnect in the teaching world between style preference in reporting punctuation versus what is necessary. She requested the Board issue clear guidelines on what is style versus necessary. Ms. Fenner responded that the Board can address specific questions, but would not be able to issue a style guideline. She added that candidates can appeal errors if they believe it is part of style. The Appeals Committee would then make a determination if it was a style preference or a grammar rule that must be followed.

Ms. Powers asked who decides the punctuation for the tests. Ms. Fenner answered that she reviews it along with an independent working court reporter and an English teacher. Ms. Powers shared that there is community perception that the test is

inconsistent when it comes to punctuation. She suggested the Board update its punctuation grading policy to be current with 2016. She also requested that the Board grade for entry-level punctuation. Ms. Fenner asserted that punctuation does not change. She reiterated that there are no errors marked for style punctuation. She stated that if a comma is added for style and it is still grammatically correct, it will not be counted as an error.

IV. ONLINE SKILLS EXAM

Ms. Fenner shared that the Office of Professional Examination Services (OPES) confirmed that the Board could move forward with a contract without the bidding process. She is expecting an interagency agreement to arrive in the coming week. Once completed, OPES will begin their audit, which may take up to six months.

Ms. O'Neill confirmed that she and Ms. Lasensky would chair the Online Skills Exam Task Force. The Board previously decided to move forward with exploring the online exam. The purpose of the task force is to determine how the process will work, what regulations will be necessary, and what rules need to be set out. The task force will consider the process being used by the National Court Reporters Association (NCRA) as a model.

Ms. O'Neill shared that the chairs and staff are working on identifying the categories of members for the task force, such as school teachers and newer reporters, to guarantee an overall representation of stakeholders. Once completed, task force members will be chosen and invited. She added that the task force meetings will be open meetings with opportunity for public input. The initial meetings will be split between Northern California and Southern California in summer and fall 2016.

Bonnie Comstock, Argonaut Court Reporting instructor, shared her concerns with the online skills examination. She asked if myRealtimeCoach (RTC) provides the examination, would it be a video of real readers versus a light coming on. Ms. O'Neill confirmed it would be real readers. Ms. Comstock asked if the Board will review tests that RTC provides to ensure they are exactly how they should be. Ms. O'Neill responded that the task force may establish a test-writing committee. She stated that NCRA still creates their own examinations, and RTC administers it. Ms. Comstock expressed concern about the technical issues that may be experienced.

Ms. Comstock asked if tests will be offered at physical testing sites for a transitional period. Ms. O'Neill said the task force would make that evaluation considering the fiscal impact. Ms. Hurt requested that Ms. Comstock send her ideas to the task force in an e-mail.

Ms. O'Neill stated that a long-term goal would be to build a bank of tests to make it possible to offer the skills examination more often. She recommended being very cautious moving forward and to set it up with utmost integrity with the goal of benefitting students and consumers. Ms. Hurt reminded the group that the task force is an exploration of everything that needs to be considered if the Board decides to move forward with an online skills examination.

Ms. Comstock and Ms. Powers volunteered to serve on the task force.

V. STRATEGIC PLAN

Update on Action Plan Accomplishments

Ms. Fenner referred to the CRB Action Plan Timeline in the Board agenda packet on page 108, which indicates goals that are reached to further the Strategic Plan. She stated that nothing new had been accomplished since the Board met in the prior month.

VI. UPDATE ON SUNSET REVIEW

Ms. Fenner stated that information was provided under Agenda Item II.B. – Legislation, in reference to AB 2192 (Salas). She reiterated that the bill was anticipated to be coming out of the Assembly Committee on Appropriations suspense file soon. She clarified that any bill that involves more than \$150,000 automatically goes to Suspense.

VIII. STATUS OF TITLE 16 CCR SECTION 2403(b)(3) – SCOPE OF PRACTICE

Ms. Fenner reported that the regulation was approved by the Office of Administrative Law and will be effective July 1, 2016. The regulation affected a technical correction to a subsection.

IX. PRESENTATION ON HOLDING OF NORTH CAROLINA STATE BOARD OF DENTAL EXAMINERS v. FEDERAL TRADE COMMISSION CASE

Mr. Chan-You, DCA staff counsel, provided an oral presentation from a script.

During the portion of the presentation discussing state supervision, Mr. Chan-You was asked who would be responsible for the state supervision. He responded that it is unclear. The Supreme Court said in order for boards with a controlling number of active market participants to get immunity from an anti-trust law suit, they must be acting pursuant to a very clear state policy to regulate and to replace competition with regulation, and there must be active state supervision.

Ms. Hurt responded that a meeting she attended designated the supervisor as the Director of DCA, which makes it more complicated in his role over all the boards. Mr. Chan-You said that it is in flux.

Mr. Liu shared that in the North Carolina case, the board did not have the power to regulate teeth whitening, but prohibited people from doing it because licensees complained that the teeth whitening business was being taken away from them. That was not appropriate regulation because the board did not have that power. It was shifting the playing field toward their regulated people.

Mr. Chan-You shared that the Supreme Court was not clear as to what is a controlling number. Mr. Liu commented that controlling may be read as influential as opposed to actual voting control. Mr. Chan-You added that theoretically one member could be found to be controlling; therefore, the decision will affect all boards with licensee members.

Mr. Liu stated that the thinking that is going to incur is that there will need to be mechanisms in place so the State is actively supervising. Mr. Chan-You added that the

Legislature is trying to harmonize the way the boards are structured with the North Carolina decision.

Mr. Liu asked if a retired person would still be deemed a market player because they hold a license as opposed to not holding a license at all. Mr. Chan-You did not recall that being addressed in the opinion, so the issue may be further explored in the coming years through case law.

Ms. Hurt asked about possible training coming down the line. Mr. Chan-You responded that the script was written in the prior year; however, the Board is encouraged to consult with staff counsel whenever it faces anti-competitive aspects or market-sensitive decisions. He further suggested the Board keep ample records and minutes whenever dealing with issues with an influence on the market.

Mr. Liu asked if the U.S. Legal situation is a regulating issue or a violation of anti-trust law in the sense that they are arguing that the services they are providing are not court reporting services. Mr. Chan-You said he would research the matter further.

Ms. Kramm asked if found to not have immunity, who would represent the Board. Mr. Chan-You responded that he believed it would be the AG's Office. He added that just because there is not immunity does not mean that the other party that brings a lawsuit automatically wins. The State would defend and indemnify members of the Board against anti-trust lawsuits to the same extent it defends and indemnifies state officers against other forms of civil litigation. The State would be responsible for paying damages other than punitive damages.

Mr. Liu asked if the licensee Board members are more exposed to damages than the public members on the theory that there is no economic benefit for the public members. Mr. Chan-You offered to research the matter.

Ms. Hurt indicated that comments and questions could be put in the letter to the Director of DCA as directed during the discussion on SB 1195 (Agenda Item II.B. – Legislation).

XIV. PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

No comments were offered.

The Board took a break at 1:44 p.m. and convened into closed session at 1:55 p.m.

X. CLOSED SESSION

The Board convened into closed session pursuant to Government Code section 11126(e)(1)(C)(i).

Mr. Liu left the meeting at 3:05 p.m.

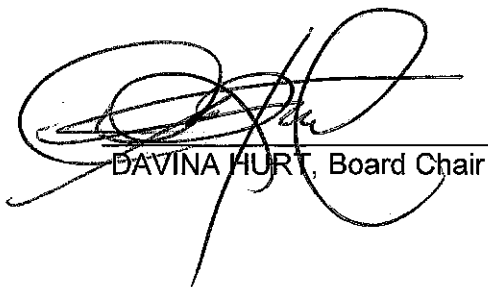
The Board returned to open session at 3:21 p.m.

XI. FUTURE MEETING DATES

Ms. Hurt asked if any members had any issues requiring immediate scheduling of a meeting. Hearing none, Ms. Fenner said she would coordinate with the members when a meeting became necessary.

ADJOURNMENT

Ms. Hurt adjourned the meeting at 3:22 p.m.



Handwritten signature of Davina Hurt, Board Chair.

DAVINA HURT, Board Chair

9.23.16

DATE



Handwritten signature of Yvonne K. Fenner, Executive Officer.

YVONNE K. FENNER, Executive Officer

9/23/16

DATE