



## **LEGISLATIVE AND REGULATORY COMMITTEE MEETING MINUTES**

**Thursday, May 19, 2011**

**Burlingame, CA**

### **Members Present:**

Fran Burton, Public Member, Chair  
Stephen Casagrande, DDS, Vice Chair  
Steven Afriat, Public Member  
Luis Dominicis, DDS  
Huong Le, DDS  
Suzanne McCormick, DDS  
Steven Morrow, DDS

### **Members Absent:**

### **Staff Present:**

Richard DeCuir, Executive Officer  
Kim A. Trefry, Enforcement Chief  
Jocelyn Campos, Enforcement Coordinator  
Karen Fischer, Licensing Analyst  
Sarah Wallace, Legislation and Regulations Analyst  
Linda Byers, Executive Assistant  
Kristy Shellans, DCA Senior Staff Counsel  
Greg Salute, Deputy Attorney General

### **ROLL CALL AND ESTABLISHMENT OF QUORUM**

Ms. Burton, chair called the meeting to order at 4:15. Roll was called and a quorum was established.

### **LEG 1 – Approval of the February 24, 2011 Legislative and Regulatory Committee Meeting Minutes**

M/S/C (Afriat/McCormick) to approve the February 24, 2011 Legislative and Regulatory Committee meeting minutes. The motion passed unanimously.

### **LEG 2 – 2011 Tentative Legislative Calendar – Information Only**

Sarah Wallace stated that the 2011 Tentative Legislative Calendar was provided in the meeting packet for informational purposes. She noted that May 27<sup>th</sup> is the last day for fiscal committees to hear and report to the floor bills introduced in their house and it is the last day for fiscal committees to meet prior to June 6<sup>th</sup>.

### **LEG 3 – Discussion and Possible Action on the Following Legislation:**

**AB 127 (Logue) Regulations: effective date** – This bill would require that a regulation or an order of repeal of a regulation become effective on January 1 next following a 90-day period after the date it is filed with the Secretary of State. This bill is proposed to closely follow the effective dates for legislation. Ms. Wallace reported that the current rulemaking process takes an estimated twelve to eighteen months to complete and that extending the time before a regulation may become effective could unnecessarily endanger the public. Ms. Wallace reported that the bill had failed passage out of committee. M/S/C (Burton/Afriat) to watch this bill. The motion passed unanimously.

**AB 991 (Olsen) State government: licenses: California Licensing and Permit Center** – This bill would require the Governor, or his or her designee, in cooperation with the California Technology Agency, to establish the California Licensing and Permit Center and corresponding user friendly web site to assist the public with licensing, permitting, and registration requirements of state agencies. The

web site would be accessible from the Governor's web site and would be required to contain information on licensing, permitting, and registration requirements of state agencies. Each state agency determined by the Governor to have licensing authority would be required to participate fully with this program by providing accurate updated information about licensing requirements. The bill would require the Governor, or designee, to operate a help center to assist applicants with licensing, permitting, and registration requirements. The bill establishes the California License and Permit Fund and requires each state agency required to participate to reallocate funds annually from its operating budget to fund the amount necessary to pay for the agency's proportionate share. This bill would require the Dental Board of California to provide the Center accurate information regarding licensing requirements, digital copies of applications, forms, or any other documents an applicant may need. The information is currently available on the Dental Board's web site. This bill would create a significant fiscal impact for the Dental Board and would serve a duplicate function. Ms. Wallace reported that the bill was in the Assembly Appropriations Suspense file. M/S/C (Dominicis/ McCormick) to watch this bill. The motion passed unanimously.

**AB 1088 (Eng) State agencies: collection of demographic data** – This bill would require every state agency, board, or commission that directly or by contract, collects demographic data as to the ancestry or ethnic origin of Californians to use additional separate collection categories and tabulations for each major Asian group as specified. The bill requires the information to be included in every demographic report on ancestry or ethnic origins of Californians it publishes. Ms. Wallace reported that existing law, Business and Professions Code Section 1715.5, requires the Board to collect specific data from all licensees with the purpose of identifying areas in California that are underserved with professionals with cultural or linguistic competencies in the dental health care fields. This bill would require additional workload to revise renewal forms, compile information, modify the Board's web site, and maintain the reports on the web site. Ms. Wallace reported that the bill was set for hearing on May 18<sup>th</sup> and was referred to the Assembly Appropriations Suspense file. M/S/C (Casagrande/McCormick) to watch this bill. The motion passed unanimously. Dr. Le requested that staff begin quantifying the fiscal impact of this bill.

**SB 100 (Price) Healing arts** – This bill makes various amendments to the provisions of the Medical Board of California's Practice Act and its requirements for regulatory oversight. The provisions that had previously affected the Dental Board's Oral and Maxillofacial Surgery (OMS) permit holders had been deleted. The Board took a "watch" position on this bill at a previous meeting. The Committee did not take action to change its position on this bill.

**SB 103 (Liu) State government: meetings** – This bill makes changes to the provisions of the Bagley-Keene Open Meetings Act (Act) relating to teleconference meetings. This bill deletes language from the Act that expressly does not prohibit a state body from holding an open or closed meeting by teleconference for the benefit of the public and instead authorizes a state body, to the extent practicable, to conduct teleconference meetings for the benefit of the public and the body. The bill provides that, upon the request of a member of a state body, the body must hold an open or closed meeting by teleconference, unless the Chair of the body determines that it would be more costly to hold the meeting by teleconference than it would be to hold it in person. The bill requires a state body that operates an Internet Web Site to provide a supplemental live audio or video web-broadcast of each of its meetings that are open to the public. The bill stipulates that if a technical failure prevents the body from providing a live web-broadcast, that failure shall not constitute a violation of the Act if the body exercised reasonable diligence in providing the live broadcast. The bill also, stipulates that failure to provide a live broadcast due to a technical failure shall not prohibit the body from meeting and taking actions as otherwise provided by law. Ms. Wallace reported that the Dental Board of California holds at least four meetings per year. The Board is required by statute, Business and Professions Code Section 1607, to hold one meeting in San Francisco and one meeting in Los Angeles each year. The Board currently holds teleconference meetings when legally and financially possible. The Board has also been web casting meetings and archiving the web cast on its web site. Ms. Kristy Shellans clarified that this bill would now authorize any member of the Board to call a teleconference meeting rather than the Board President or Executive Officer. The Board took a "watch" position on this bill at a previous meeting. The Committee did not take action to change its position on this bill.

**SB 540 (Price) Dentistry** - This bill extends the operation of provisions related to the Dental Board of California until January 1, 2016, and instead specifies that the board would be subject to review by the appropriate policy committees of the Legislature. The bill would change the membership of the board to include a new public member to be appointed by the Governor, and, on and after January 1, 2012, would delete the dental hygienist member and the dental assistant member and add 2 additional public members to the board, to be appointed by the Governor. The bill would make technical, conforming changes to related provisions. The bill would also create a Dental Assisting Council of the board to consider matters relating to dental assistants and make recommendations to the board, as specified. This bill contains other related provisions and other existing laws. Ms. Wallace reported that the discussion and analysis of this bill would be discussed on Friday during the full board session.

**SB 541 (Price) Regulatory boards: expert consultants** – This bill is an urgency measure that authorizes any board, within the Department of Consumer Affairs, the State Board of Chiropractic Examiners, and the Osteopathic Medical Board of California to enter into an agreement with an expert consultant to do any of the following: provide an expert opinion on enforcement-related matters, including providing testimony at an administrative hearing; assist the board as a subject matter expert in examination development, examination validation, or occupational analyses; evaluate the mental or physical health of a licensee or an applicant for a license as may be necessary to protect the public health and safety. The bill provides that an executed contract between a board and an expert consultant shall be exempt from the State Contract Act. The bill requires each board to establish policies and procedures for the selection and use of expert consultants. This bill will enable the Dental Board of California to continue to utilize essential subject matter experts without going through the lengthy formal contracting process for consulting services. The Board uses subject matter experts in enforcement matters, examination development, and evaluation of applicants and licensees. The utilization of these experts strengthens the Boards ability to provide better public protection. Without this bill, the formal contracting process will create a considerable backlog for both the Department of Consumer Affairs and the Board, and will significantly impact the timeframes for investigating complaints, developing examinations, and evaluating applicants and licensees. The Board may be required to promulgate regulations to establish policies and procedures for the selection and use of expert consultants. The regulatory process can take twelve to eighteen months to complete. The Board took a support position at the previous meeting. Staff sent a letter of support to the author on April 28, 2011. The Committee did not take action to change its position on this bill.

**SB 544 (Price) Professions and vocations: regulatory boards** – This bill would require cooperation between state agencies and all boards within the department when investigating a licensee, and would require a state agency to provide to the board all licensee records in the custody of the state agency. The bill would require all local and state law enforcement agencies, state and local governments, state agencies, licensed health care facilities, and any employers of any licensee to provide licensee records to any board within the department upon request by that board, and would make an additional requirement specific to the Department of Justice. By imposing additional duties on local agencies, the bill would impose a state-mandated local program. This bill contains other related provisions and other existing laws. Ms. Wallace reported that the discussion and analysis of this bill would be discussed on Friday during the full board session.

**SB 694 (Padilla) Dental care** - This bill would require the Director of the Department of Consumer Affairs, in collaboration with the board, to convene a working group to conduct an analysis of the dental care needs of California residents. The workgroup would be responsible for analyzing the populations of children who would be newly eligible to receive dental health services under the federal Patient Protection and Affordable Care Act. The workgroup will be responsible for determining the workforce requirements to meet the needs of these newly insured children, considering the regional needs and capabilities required. The bill authorizes the work group to engage the expertise of stakeholders to assist in the analysis. It is anticipated that the enactment of this bill will require the hiring of an additional analyst to handle the administration of the work group, analyze the dental care needs, and develop a report to submit to the legislature. In addition to needing an additional analyst, staff anticipates that the Board will require to utilization of six (6) subject matter experts to participate in the work group and work with community health organizations, professional organizations, government

agencies, and the public. The hiring of an additional analyst and contracting with six subject matter experts will cause a significant fiscal impact on the Board. The Board had taken a “watch” position at a previous meeting. The Committee did not take action to change its position on this bill.

**SB 943 (Committee on Business, Professions and Economic Development) Healing arts** – This bill makes several non-controversial, minor, non-substantive or technical changes to various miscellaneous provisions pertaining to regulatory boards of the Department of Consumer Affairs (DCA) and professions regulated under the Business and Professions Code (BPC). The bill makes changes relating to the Dental Hygiene Committee of California. This is one of three omnibus bills authored by the Senate Business, Professions, and Economic Development Committee (Committee). This bill is specific to the healing arts boards within the Department of Consumer Affairs. It is the Committee’s intent to consolidate a number of non-controversial provisions related to various regulatory programs and professions governed by the Business and Professions Code. Consolidating the provisions in one bill is designed to relieve the various licensing boards, bureaus and professions from the necessity and burden of having separate measures for a number of non-controversial revisions. The Committee analysis states that many of the provisions of this bill are minor, technical and updating changes, while other provisions are substantive changes intended to improve the ability of various licensing programs and other entities to efficiently and effectively administer their respective laws. However, as a Committee bill, if controversy or opposition should arise regarding any provision that cannot be resolved, then that provision will be removed from the bill to eliminate the chance of placing any of the other provisions in jeopardy. Hygienists were licensed under the Committee on Dental Auxiliaries (COMDA) which was under the jurisdiction of the Dental Board of California. Senate Bill 853 (Perata, Chapter 31, Statutes of 2008) brought the hygienists under the jurisdiction of the Dental Hygiene Committee of California. The intent of the law was to create an autonomous Dental Hygiene Committee of California responsible for promulgating its own regulations, conduct and develop examinations, licensing and enforcement. This bill makes changes to include clarifying language, address licensee’s responsibilities and requirements and enhance consumer protection. This bill only amends sections of the Dental Practice Act that relate to the Dental Hygiene Committee of California. This bill does not amend or repeal Business and Professions Code § 1901 which states “There is hereby created within the jurisdiction of the Dental Board of California a Dental Hygiene Committee of California in which the administration of this article is vested.” M/S/C (Afriat/McCormick) to direct staff to send a letter to the Committee to seek clarification on the applicability of the proposed amendments to Section 1955 to various licensees.

#### **LEG 4 – Update on Pending Regulatory Packages**

##### **A. Retroactive Fingerprinting (*California Code of Regulations, Title 16, Sections 1007, 1008, and 1017.2*)**

Ms. Wallace reported that the rulemaking file was submitted to the Office of Administrative Law (OAL) on January 28, 2011 and was approved on March 9, 2011. The regulation is effective on July 1, 2011 and is applicable to all licensees beginning in the July 2011 renewal cycle.

##### **B. Dental Assisting Educational Programs and Courses (*California Code of Regulations, Title 16, Sections 1070, 1070.1, 1070.2, 1070.6, 1070.7, 1070.8 and 1071*)**

Ms. Wallace reported that the Board adopted the final regulatory language as noticed in the third modified text at its February 25, 2011 meeting. The rulemaking file is in the process of being finalized and will be submitted to the Department of Consumer Affairs (DCA) by the end of May 2011. Ms. Wallace stated that the one-year deadline to submit the final rulemaking to OAL is June 3, 2011. Staff has notified the Director of DCA of the impending deadline, and has requested a letter of extension for the final submission of the rulemaking to OAL.

##### **C. Minimum Standards for Infection Control (*California Code of Regulations, Title 16, Section 1005*)**

Ms. Wallace reported that the final rulemaking package was submitted to DCA on April 4, 2011. The rulemaking is required to be approved by the Director of DCA, the Secretary of the State and Consumer Services Agency, and the Director of the Department of Finance. Staff anticipates the approval process

to take thirty to ninety days. Ms. Wallace stated that the one-year deadline to submit the final rulemaking to OAL is August 26, 2011.

**D. Consumer Protection Enforcement Initiative (*California Code of Regulations, Title 16, Sections 1018.05 and 1020*)**

Ms. Wallace reported that the initial rulemaking file was submitted to OAL on February 7, 2011. The proposed action was published on February 18, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on February 18, 2011 and ended on April 4, 2011. A regulatory hearing was held on April 4, 2011 and the Board received comments from the California Dental Association.

**E. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines (*California Code of Regulations, Title 16, Sections 1018 and 1020.5*)**

Ms. Wallace reported that the initial rulemaking file was submitted to OAL on March 11, 2011. The proposed action was published on March 25, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on March 25, 2011 and ended on May 9, 2011. A regulatory hearing was held on May 10, 2011. The Board received written comments from Julianne D'Angelo Fellmeth, Center for Public Interest Law, and oral testimony from Bill Lewis, California Dental Association.

**F. Sponsored Free Health Care Events (*California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18*)**

Ms. Wallace reported that the Board approved proposed regulatory language at its February 25, 2011 meeting. She stated that staff is currently drafting the initial rulemaking documents and will be filing the proposed regulation with OAL in the near future.

**LEG 5 – Prospective Legislative Proposals Request for proposals - Stakeholders Are Encouraged to Submit Proposals in Writing to the Board Before or During the Meeting for Possible Consideration by the Board at a Future Meeting**

No prospective legislative proposals were submitted to the Committee.

**Public Comment**

There was no public comment.

**Adjournment**

The committee adjourned at 5:05 p.m.