

DENTAL BOARD OF CALIFORNIA

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**DENTAL BOARD OF CALIFORNIA
TELECONFERENCE PUBLIC BOARD MEETING
MEETING MINUTES
FRIDAY, AUGUST 14, 2020**

NOTE: Pursuant to the provisions of Governor Gavin Newsom's Executive Order N-25-20, dated March 12, 2020, neither a public location nor teleconference locations are provided.

Members Present:

Thomas Stewart, DDS, President
Steven Chan, DDS, Vice President
Joanne Pacheco, RDH, MAOB, Secretary
Fran Burton, MSW, Public Member
Alan Felsenfeld, DDS, MA
Ross Lai, DDS
Lilia Larin, DDS
Meredith McKenzie, ESQ, Public Member
Abigail Medina, Public Member
Alicia Montell, DDS
Steven Morrow, DDS, MS,
Rosalinda Olague, RDA, BA
James Yu, DDS, MS

Members Absent:

None.

Staff Present:

Karen M. Fischer, MPA, Executive Officer
Sarah Wallace, Assistant Executive Officer
Tina Vallery, Chief of Administration and Licensing
Wilbert Rumbaoa, Administrative Services Unit Manager
Gabriel Nevin, Legislative and Regulatory Analyst
Pahoua Thao, Administrative Analyst
Daniel Yoon, Licensing Analyst
Jessica Olney, Licensing Analyst
Michael Kanotz, Legal Counsel
Danielle Rogers, Legal Counsel

Agenda Item 1: Call to Order/Roll Call/Establishment of a Quorum

The Board President called the meeting to order at 9:05 a.m. The Board Secretary called the roll and a quorum was established.

President Thomas Stewart welcomed newly appointed Board member Dr. Alicia Montell. Dr. Montell provided a brief background of her work experience.

Agenda Item 2: Discussion and Possible Action Regarding May 14, 2020, Board Meeting Minutes

Motion/Second/Call (M/S/C) (Burton/Yu) to approve the May 14, 2020, Board meeting minutes.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Montell, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None.

The motion passed and the minutes were approved with no changes. There were no public comments.

Agenda Item 3: Public Comment on Items Not on the Agenda

There were no public comments on items not on the agenda.

Agenda Item 4: Budget Report:

Wilbert Rumbaoa, Administrative Services Unit Manager, provided a report on the Board's funds it manages: the State Dentistry Fund and the State Dental Assisting Fund. As of May 31, 2020, the Board spent approximately \$11.7 million dollars or 76% of its total State Dentistry appropriation for Fiscal Year (FY) 2019-20. Mr. Rumbaoa reported the State Dental Assisting Fund spent approximately \$1.5 million dollars or 59% of its total State Dental Assisting appropriation for FY 2019-20. Additionally, Mr. Rumbaoa reported Governor Gavin Newsom signed the Budget Act of 2020 on June 29, 2020. The Budget Act of 2020 includes the merging of the State Dentistry Fund and the State Dental Assisting Fund, the General Fund Loan, and the new appropriation for the Dental Board. The State Dental Assistant Fund shall be abolished on July 1, 2022. The Dental Board's full appropriation for FY 2020-21 is \$18.5 million dollars. In addition, Mr. Rumbaoa reported that the Budget Act of 2020 authorizes the Director of Finance to transfer a loan of \$5 million dollars from the State Dentistry Fund to the State's General Fund. The loan is scheduled to be repaid with interest in FY 2024-25.

Dr. Ross Lai asked if the loan information will be made available to the public on the Dental Board's website. Mr. Rumbaoa responded the loan information is available on the Department of Finance's website. Dr. Lilia Larin asked if it is common to transfer the Board's funds to the State's General Fund. Ms. Karen Fischer, Executive Officer, explained the process and stated that the loan was a result of the expenses that have been incurred due to impacts of the Coronavirus (COVID-19) pandemic.

Claudia Pohl, California Dental Assistants Association (CDAA) representative, asked if expenditures will be tracked for Dental Assisting Programs despite the fact that funds

will be merged in 2022. Mr. Rumbaoa responded that the Board will still have the ability to check on the dental assisting funds. Dr. Bruce Witcher, former Board member, commented that it is a common practice for the governor's office to request for loans across all state departments and will usually pay it back in time with interest.

Agenda Item 4(a): DCA Pro Rata

Mr. Taylor Schick, Fiscal Officer of the Budget Office at the Department of Consumer Affairs (DCA), provided the report which is available in the meeting materials published on the Board's website. The report covered a letter from the DCA, addressed to Senator Glazer and Assembly Member Low, regarding the methodology used for allocating distributed costs and a summary of costs by each service area of the Department for each board and bureau. There were no public comments.

Agenda Item 4(b): Savings and Reimbursements

Mr. Schick, Fiscal Officer of the Budget Office at the DCA, provided the report which is available in the meeting materials published on the Board's website. The report covered historical reimbursements: fingerprint reports, probation monitoring reimbursement, and cost recovery for the Dental Board.

Dr. Bruce Witcher, former Board member, pointed out that the cost recovery was much lower in the past. Mr. Rumbaoa responded that the cost recovery has improved over the years and the Board will continue to monitor the reimbursements.

Agenda Item 4(c): Controlled Substance Utilization Review and Evaluation System (CURES) Fee Increase

Mr. Rumbaoa, Administrative Services Unit Manager, provided the report which is available in the meeting materials published on the Board's website. The report covered the CURES background and proposed fee increases. There were no public comments.

Agenda Item 4(d): Diversion Program Costs

Mr. Rumbaoa, Administrative Services Unit Manager, provided the report which is available in the meeting materials published on the Board's website.

Dr. Lai asked if the Diversion Program will be sustainable for the Board in the future. Dr. Alicia Montell asked if the testing and lab fees are included in the participant's monthly charge. Ms. Karen Fischer, Executive Officer, responded that it is a separate cost to the participants. Dr. Steven Morrow commented the Board should maintain the Diversion Program for licensees who need help with rehabilitation.

Dr. Witcher, formal Board member, commented in support of Dr. Morrow's comment.

Agenda Item 5: Update Regarding Future Acceptance of WREB Manikin and Patient-Based Examinations

Ms. Fischer, Executive Officer, provided the report which is available in the meeting materials published on the Board's website. There were no public comments.

At 10:15 a.m. the Board recessed for a break.

At 10:30 a.m. the Board reconvened to open session.

Agenda Item 6: Report on the Results of the OPES Review of Alternatives for the RDAEF Clinical and Practical Examinations

Daniel Yoon, Licensing Analyst, provided the report which is available in the meeting materials published on the Board's website.

Dr. Molly Newlon, dental practitioner, asked if there is an examination process in place for current RDAEF's who completed the program but were unable to take the exam due to the impact of COVID-19. Mis. Fischer responded that the next agenda item will cover the process.

Agenda Item 7: Discussion and Possible Action Regarding Submission of a Waiver Request to the Director of DCA to Waive Business and Professions Code Sections 1753(a)(4) and 1753.4 and California Code of Regulations, Title 16, Section 1081.2 Pursuant to the Governor's Executive Order N-39-20 Relating to Waiving the Registered Dental Assistant in Extended Functions (RDAEF) Clinical and Practical Examinations

Mr. Yoon, Licensing Analyst, provided the report which is available in the meeting materials published on the Board's website.

Dr. Alan Felsenfeld commented in support of the waiver. Ms. Rosalinda Olague commented in support of the wavier as the Board's RDA.

Claudia Pohl, CDAA representative, commented in support of the waiver and believes there should be a manikin-based exam for RDAEFs. Ms. Pohl stated CDAA would also like to hear inputs from educators and subject matter experts on alternatives for the RDAEF examination. Amy Monk, current RDA, commented in support of the wavier. Dr. Bruce Whitcher, former Board member, pointed out that cord retraction is used on a live patient exam and should be considered when developing an alternative mannikin-based exam. He commented in support of a mannikin-based exam and believes the alternative should be under development. Dr. Molly Newlon, dental practitioner, asked if the waiver would suspend the testing and grant licensure for current RDAEF graduates. Dr. Newlon also asked if a portfolio exam will be considered as a pathway to licensure. Suzie Dault, Chief Executive Officer of Dental Specialties Institute, asked the Board to consider a practical examination for the RDAEF2 portion.

M/S/C (Felsenfeld/Olague) to direct staff to submit a waiver request to the Director of the Department of Consumer Affairs that would suspend the requirement for a specified amount of time for RDAEFs to successfully pass the clinical and practical examinations; direct staff to work with OPES to immediately begin written examination development for the RDAEF general written examination to ensure skills identified in the June 2016 RDAEF Validation Report, currently assessed in the clinical and practical examinations, are measured as application of those knowledges on the written examination; direct staff to work with OPES to develop a RDAEF licensing model that includes a

combination of dentist verification and certified course work; and direct staff to seek an author to carry legislation to repeal the requirements of the RDAEF clinical and practical examinations permanently.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Montell, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None

Agenda Item 8: Discussion and Possible Action Regarding Submission of a Waiver Request to the Director of DCA to Waive Business and Professions Code Sections 1646.4, 1646.9, 1647.7 and California Code of Regulations, Title 16, Sections 1043.3 to 1043.7, inclusive, Pursuant to the Governor's Executive Order N-39-20 Relating to Postponing the Requirement for On-site Inspection and Evaluations for General Anesthesia and Conscious Sedation Permits

Jessica Olney, Licensing Analyst, provided the report which is available in the meeting materials published on the Board's website.

The Board members had a lengthy conversation regarding the waiver request to postpone the examination requirement for on-site inspection for general anesthesia and conscious sedation permits. Ms. Olney addressed Board member questions.

Dr. Bruce Whitcher, former Board member, provided a background on the permit evaluation requirement and explained the process of scheduling on-site inspections.

M/S/C (Felsenfeld/Yu) to direct staff to submit a waiver request to the Director of the Department of Consumer Affairs to waive Business and Professions Code Sections 1646.4, 1646.9, 1647.7 and California Code of Regulations, Title 16, Sections 1043.3 to 1043.7, inclusive, pursuant to the Governor's Executive Order N-39-20 relating to postponing the requirement for on-site inspection and evaluations for General Anesthesia and Conscious Sedations permits for one year.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Montell, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None

The motion passed. There were no public comments.

Agenda Item 9: Discussion and Possible Action to Reinitiate a Rulemaking to Amend California Code of Regulations, Title 16, Sections 1031 Relating to the Passing Score for the Dentistry Law and Ethics Examination

Gabriel Nevin, Legislative and Regulatory Analyst, reported that the Board previously voted to initiate a rulemaking to amend the provision contained in California Code of Regulations, Title 16, Section 1031 at its February 7-8, 2019 meeting. The previous provision required a score of at least 75% to pass the Dentistry Law and Ethics examination. The amendments approved by the Board in February 2019 were intended to allow for criterion-referenced passing scores to be used at the recommendation of the OPES.

Board staff submitted the initial rulemaking documents to the DCA for review, beginning with the Regulatory Unit within the Legal Affairs Division on October 17, 2019. Board Regulatory Counsel reviewed this language and found clarity issues with the current construction. Specifically, the current proposed language requires candidates to “achieve a passing score” does not define a “passing score”, making the regulation ambiguous. Staff have worked with Board Regulatory Counsel and the OPES to develop the proposed language for Section 1031 which proposes changes in bold that clarify the regulation but do not overly-restrict the Board. The proposed amended construction should be sufficiently specific and clearly defined to be acceptable regulatory language.

Section 1031. Supplemental Examinations in California Law and Ethics.

- Prior to issuance of a license, an applicant shall achieve a **criterion referenced passing score on the successfully complete** supplemental written examinations in California law and ethics.
- (a) The examination on California law shall test the applicant's knowledge of California law as it relates to the practice of dentistry.
- (b) The examination on ethics shall test the applicant's ability to recognize and apply ethical principles as they relate to the practice of dentistry.
- ~~(c) A candidate shall be deemed to have passed the examinations if his/her score is at least 75% in each examination.~~ **(c) As used in this section, “criterion-referenced passing score” is a specified point in a distribution of scores at or above which candidates have achieved entry level competence.**
- Note: Authority cited: Section 1614, Business and Professions Code. Reference: Sections 139, 1630, 1632 and 1634.1, Business and Professions Code.

M/S/C (Burton/Felsenfeld) to approve the proposed regulatory language relative to passing scores for the Dentistry Law and Ethics Examination, and direct staff to take all steps necessary to re-initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and delegating authority to the Executive Officer to make any technical or non-substantive changes to the rulemaking package. If after the close of the 45-day public

comment period and public regulatory hearing, no adverse comments are received, delegate authority to the Executive Officer to make any technical or non-substantive changes to the proposed regulations before completing the rulemaking process and adopt the proposed amendments to California Code of Regulations, Title 16, Section 1031 as noticed in the proposed text.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Montell, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None

The motion passed. There were no public comments.

Agenda Item 10(a): Discussion and Possible Action Regarding Acceptance of Academy of General Dentistry (AGD) Transcripts for Continuing Education

Gabriel Nevin, Legislative and Regulatory Analyst, provided the report which is available in the meeting materials published on the Board's website. The report covered the AGD transcript and the process verifying the continuing education (CE) credits submitted for licensees.

Terri Wong, AGD Executive Director, and Michael Toner, AGD Manager of Government Relations, was available to provide more information regarding the AGD process. Ms. LaDonna Drury-Klein, former Board member, commented the continuing education requirement was an issue that was addressed and modified during her tenure as a Dental Board member. She also provided a brief background of the provisions that were put into place.

Agenda Item 10(b): Discussion and Possible Action Regarding Continuing Education Providers and Conflict of Interest

Gabriel Nevin, Legislative and Regulatory Analyst, provided the report which is available in the meeting materials published on the Board's website.

The Board members had a lengthy conversation regarding potential conflict of interest at the association meetings. Most of the Board members agreed there were no issues around conflict of interest with the CE providers.

Ms. Wong, AGD Executive Director, commented that AGD conducts surprise audits for its CE providers to ensure that courses are adhering to the AGD's Program Approval for Continuing Education guidelines.

M/S/C (Stewart/Lai) to conclude that because the Board has not received any complaints about conflicts of interest in CE provider courses, that the existing system is sufficient, and no other action is required.

Ayes: Burton, Chan, Lai, McKenzie, Medina, Montell, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: Larin

Abstentions: Felsenfeld

Absent: None.

Recusals: None

At 12:22 p.m. the Board recessed for lunch.

At 12:35 p.m. the Board reconvened to open session.

Agenda Item 10(c): Discussion and Possible Action to Reinitiate a Rulemaking to Amend California Code of Regulations, Title 16, Sections 1016 and 1017 Relating to Continuing Education

Gabriel Nevin, Legislative and Regulatory Analyst, reported that the Board previously voted to initiate a rulemaking to amend the provision contained in California Code of Regulations, Title 16, Section 1016 and 1017 at its February 7-8, 2019 meeting. The proposed language a course related to the risks of addiction associated with the use of Schedule II drugs mandatory for dentistry license renewal and makes various other updates to the continuing education requirements. One of the provisions in the proposed language provides continuing education unit credit to licensees who provide unpaid volunteer dental services as part of a free public health care event or community health clinic.

Upon review, Board Regulatory Counsel determined there is a clarity issue with the proposed language in Section 1017(j). Specifically, the proposed language as drafted provides that up to three credits of required continuing education units may be earned by providing unpaid volunteer dental services as part of a free public health care event or community health clinic. However, the draft language does not make clear how much time spent providing free services is required to earn the three continuing education units. Because this language was insufficiently clear, staff and Board regulatory counsel developed clarifying language which will add specificity to the proposed language. Normally continuing education units translate to one unit for one hour receiving contact instruction in a continuing education course. However, in the volunteer context the licensee is providing services, not receiving instruction, and this defined ratio is therefore inapplicable.

Staff recommended assuming a 1:1 ratio of hours of providing unpaid volunteer dental services to patients to units of continuing education, up to three total hours. Staff recommended amendments are shown in bold in the attached proposed language to be added to this rulemaking:

Chapter 1. General Provisions Applicable to All Licensees Article 4. Continuing Education

§ 1017. Continuing Education Units Required for Renewal of License or Permit.

- (i)Licensees who provide direct patient care as an unpaid volunteer at a free public health care event or non-profit community health clinic shall be issued continuing education credit of one unit per hour of providing unpaid volunteer dental services to patients, for up to three units of their total continuing education unit requirements for license renewal. Units of credit may be issued in half hour increments.

M/S/C (Larin/Burton) to approve the proposed regulatory language relative to Continuing Education requirements, and direct staff to take all steps necessary to re-initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and delegating authority to the Executive Officer to make any technical or non-substantive changes to the rule-making package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, delegate authority to the Executive Officer to make any technical or non-substantive changes to the proposed regulations before completing the rulemaking process and adopt the proposed amendments to California Code of Regulations, Title 16, Sections 1016 and 1017 as noticed in the attached proposed text.

Ayes: Burton, Chan, Felsenfeld, Lai, Larin, McKenzie, Medina, Montell, Morrow, Olague, Pacheco, Stewart, Yu.

Nays: None.

Abstentions: None.

Absent: None.

Recusals: None

The motion passed. There were no public comments.

Agenda Item 11(a): Discussion and Possible Action on Legislation

Gabriel Nevin, Legislative and Regulatory Analyst, provided updates of the bills the Board has currently been tracking: Assembly Bill (AB) 613, AB 1998, AB 2028, AB 2113, AB 2520, AB 2549, AB 3045, Senate Bill (SB) 878, SB 1168, SB 1474. Ms. Fran Burton led the discussion. The bills were discussed at the July 24, 2020 Board Meeting, and the Board had an opportunity to consider and take a position on each piece of legislation. Mr. Nevin reported on AB 2028 and the summary of the bill is available in the meeting materials.

President Stewart asked for Board's current position on the omnibus bill. Ms. Burton responded that the Board is currently in opposition of the omnibus bill. There were no public comments.

Agenda Item 12: Board Member Comments on Items Not on the Agenda

Ms. Abigail Medina asked for more information regarding the impact of COVID-19 to Board staff.

Agenda Item 13: Adjournment

The Board President adjourned the meeting at 1:32 p.m.