STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.

DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov

NOTICE OF PUBLIC MEETING – Notice is hereby given that a public meeting of the Dental Board of California will be held as follows:

Friday, May 18, 2012

Embassy Suites SFO Airport Waterfront
150 Anza Blvd., Burlingame, CA 94010
650-292-7376 or 916-263-2300

Public comments will be taken on agenda items at the time the specific item is raised. The Board may take action on any item listed on the agenda, unless listed as informational only. All times are approximate and subject to change. Agenda items may be taken out of order to accommodate speakers and to maintain a quorum. The meeting may be cancelled without notice. Time limitations for discussion and comment will be determined by the President. For verification of the meeting, call (916) 263-2300 or access the Board's Web Site at ***www.dbc.ca.gov****. This Board meeting is open to the public and is accessible to the physically disabled. A person who needs a disability-related accommodation or modification in order to participate in the meeting may make a request by contacting Richard DeCuir, Executive Officer at 2005 Evergreen Street, Suite 1550, Sacramento, CA 95815, or by phone at (916) 263-2300. Providing your request at least five business days before the meeting will help to ensure availability of the requested accommodation*

Friday, May 18, 2012

While the Board intends to webcast this meeting, it may not be possible to webcast the entire open meeting due to limitations on resources.

8:30 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD

ROLL CALL ..... Establishment of a Quorum

AGENDA ITEM 7 ..... Approval of the Full Board Meeting Minutes from February 23-24, 2012, April 11, 2012 Teleconference Minutes, and Acceptance of the Dental Assisting Committee Minutes for February 23, 2012

AGENDA ITEM 8 ..... President's Report

AGENDA ITEM 9 ..... Executive Officer's Report

AGENDA ITEM 10 ..... Update on Dental Hygiene Committee of California (DHCC) Activities

AGENDA ITEM 11 ..... Budget Reports: Dental Fund & Dental Assisting Fund

AGENDA ITEM 12 ..... Discussion and Possible Action Regarding:

(A) Staff's Recommendation for Appropriate Fee Increases in Dentistry to Sustain Board Expenditures; and

(B) Initiation of a Rulemaking relevant to *(Cal. Code of Regs., Title 16, §1021 Fees)*

AGENDA ITEM 13 ..... Update on Pending Regulatory Packages:

A. Sponsored Free Health Care Events *(Cal. Code of Regs., Title 16, §1023.15, 1023.16, 1023.17,1023.18 and 1023.19)*
B. Notice to Consumers of Licensure by the Dental Board *(Cal. Code of Regs., Title 16, §1065)*
C. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines *(Cal. Code of Regs., Title 16, §1018 and 1020.5)*

AGENDA ITEM 14 ..... Discussion and Possible Action Regarding:

(A) Legal Opinions Received Regarding Uniform Standards for Substance Abusing Healing Arts Licensees *(SB 1441, Ridley-Thomas, Chapter 548, Statutes of 2008)*; and

(B) Initiation of a Rulemaking to Amend *California Code of Regulations, Title 16, §1018 and 1020.5* and to add a New Section Regarding Implementation of Uniform Standards for Substance Abusing Licensees

AGENDA ITEM 15 ..... Discussion and Possible Action Regarding:

(A) Comments Received During the 15-Day Public Comment Period for the Board's Proposed Rulemaking to Add *Title 16, CCR, §1023.15, 1023.16, 1023.17, 1023.18, and 1023.19* Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events; and
(B) Adoption of Proposed Additions to *Title 16, CCR, §1023.15, 1023.16, 1023.17, 1023.18, and 1023.19* Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

AGENDA ITEM 16 ..... Discussion and Possible Action to Consider Initiation of a Rulemaking to Amend *California Code of Regulations, Title 16, §1004* Regarding Abandonment of Applications

AGENDA ITEM 17 ..... Discussion and Possible Action to:

(A) Consider Recommendations from the Department of Consumer Affairs to Modify the Board's Proposed Rulemaking to Add *California Code of Regulations, Title 16, §1065* Regarding Requirements for Posting Notice to Consumers of Licensure by the Dental Board, and

(B) Adoption of Proposed Amendments to *California Code of Regulations, Title 16, §1065* Regarding Requirements for Posting Notice to Consumers of Licensure by the Dental Board

AGENDA ITEM 18 ..... Dental Assisting Council Report
The Board may take action on any items listed on the attached Dental Assisting Council agenda

AGENDA ITEM 19 ..... Examination Committee Report
The Board may take action on any items listed on the attached Examination Committee agenda

AGENDA ITEM 20 ..... Update on Portfolio Licensure Examination for Dentistry *(AB 1524, Stats 2010 ch 446)*

AGENDA ITEM 21 ..... Examination Appeals Committee Report
Recommendations to the Board to grant/deny appeals of exam candidates

AGENDA ITEM 22 ..... Licensing, Certification & Permits Committee Report
The Board may take action on any items listed on the attached Licensing, Certification & Permits Committee agenda and act on recommendations to the Board regarding issuance of new licenses to replace cancelled licenses

AGENDA ITEM 23 ..... Legislative and Regulatory Committee Report
The Board may take action on any items listed on the attached Legislative and Regulatory Committee agenda

AGENDA ITEM 24 ..... Enforcement Committee Report
The Board may take action on any items listed on the attached Enforcement Committee agenda

PUBLIC COMMENT

ADJOURNMENT

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Dental Board of California
Meeting Minutes
Thursday, February 23, 2012

Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101
DRAFT

Members Present:
Bruce Whitcher, DDS President
Huong Le, DDS, Vice President
Fran Burton, Secretary
Steven Afriat, Public Member
John Bettinger, DDS
Stephen Casagrande, DDS
Luis Dominicis, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA
Suzanne McCormick, DDS
Steven Morrow, DDS
Thomas Olinger, DDS

Members Absent:

Staff Present:
Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Kim Trefry, Enforcement Chief
Teri Lane, Supervising Investigator I
Jocelyn Campos, Enforcement Coordinator
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers, Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Dr. Bruce Whitcher, President, called the meeting to order at 8:30 a.m. Fran Burton, Secretary called the roll and a quorum was established.

The Board immediately went into closed session to discuss disciplinary matters.

The Board returned to open session at 1:05 p.m.
Dr. Whitcher introduced the visiting students from the Southwest Dental Hygiene Program who attended as part of their ethics course. He also introduced the representatives from CADAT, Tamara McNeely, Program Director from San Joaquin Valley College, Guy Acheson, Academy of General Dentistry, representatives from CDA, Katherine Scott from the Children's Partnership, and representatives from the Universidad De La Salle. Fran Burton, Secretary, called the roll and established a quorum.

AGENDA ITEM 1: Update on Pending Regulatory Packages:
Sarah Wallace, Legislative and Regulatory Analyst gave an overview of the pending regulatory packages.

A. Consumer Protection Enforcement Initiative *(Cal. Code of Regs., Title 16, Sections 1018.05 and 1020)*
Ms. Wallace reported that the Consumer Protection Enforcement Initiative (CPEI) has been going through the regulatory process for the past year. Staff was notified by the Office of Administrative Law (OAL) at the beginning of February that the package had been approved. It has been filed with the Secretary of State and will become effective on March 9, 2012. The Board's website has been updated with this new information.

B. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines *(Cal. Code of Regs., Title 16, Sections 1018 and 1020.5)*
Ms. Wallace stated that this regulatory package will be discussed during Agenda Item 2.

C. Sponsored Free Health Care Events *(Cal. Code of Regs., Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18)*
Ms. Wallace stated that this regulatory package had gone out for the 45 day public comment period which ended on November 21, 2011. There was a regulatory hearing held on November 22, 2011. The Board received comments from the California Association of Oral and Maxillofacial Surgeons (CALAOMS), the California Dental Association (CDA), and the California Academy of General Dentists (CAGD). We will be discussing and responding to comments during Agenda Item 3.

D. Notice to Consumers of Licensure by the Dental Board (Cal. Code of Regs., Title 16, Section 1065)
Ms. Wallace reported that at the November meeting the Board reviewed proposed language for the Notice to Consumers of Licensure by the Dental Board. This was a regulation that was required as a part of the Board's Sunset Review bill, SB 540. Staff has initiated the rulemaking with OAL and filed the rulemaking on January 10, 2012. The 45 day public comment period began on January 20, 2012 and will end on March 5, 2012. A Regulatory Hearing is scheduled for March 5, 2012 in Sacramento. Any comments received during the public comment period will be brought to the Board at the next meeting.

AGENDA ITEM 2(A): Discussion and Possible Action Regarding Comments Received During the 45-day Public Comment Period for the Board's Proposed Rulemaking to Amend Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines.
Ms. Wallace reported that this item is the Board's Regulatory Package relative to Uniform Standards. During the August and November Board meetings the Board reviewed comments that had been received during the 45 day public comment periods. At the November meeting the Board tabled discussion due to conflicting legal opinions. There was not sufficient time to review and provide an opinion regarding the Legislative Opinion due to the limited timeframe between when the Legislative Opinion was received and the date of the Board meeting. The Board voted to table further discussion until the Department could provide further clarification.

DCA notified staff a few days prior to this Board meeting that another opinion from the Government Unit of the Deputy Attorney General's office was received. DCA's legal department is still reviewing this opinion and it has not yet been released to the Boards. Kristy Shellans, legal Counsel to the Dental Board stated that she only received this opinion a few days prior to the Board meeting and has not had adequate time to review it. Ms. Shellans stated that due to the lack of time to review the new opinion and the fact that this particular rulemaking is due to expire in March, she recommends that the Board direct staff to either let the current package expire or withdraw it and authorize the Executive Officer and staff to work with legal in preparing suggested text for possible changes to

the guidelines for the Board's consideration at an upcoming meeting once the analysis of the opinion has been received.

Mr. DeCuir inquired who exactly the new opinion was from. He stated that if it's not directly from the Attorney General's Office, does it hold the same weight? Ms. Shellans stated that it is an independent interpretation of the implementation requirements of SB 1441, from a Deputy Attorney General in the Government Unit, an informal opinion not a formal opinion but the Government Unit's opinion carries some weight because they deal with a lot of interpretations of State Law.

Ms. Shellans stated that the only way for the Board to make a truly informed decision is to have all of the opinions and proposals to consider. Ms. Shellans said that one of the opinions stated that within each agency, an analysis needs to be done to determine how the proposed standards would interact with each Practice Act.

Mr. Afriat asked if Ms. Shellans opinion had changed. Ms. Shellans answered that her opinion has not really changed but she thinks there may be a way to harmonize the different opinions. She stated that she still believes that the Board retains ultimate discretion to decide what rules it will adopt. Mr. Afriat asked what the other Boards are doing. Ms. Shellans answered that it is her understanding that all of the other Boards will be given the same recommendation by their legal counsel as she gave to this Board earlier.

Greg Salute, Deputy Attorney General stated that the Department of Consumer Affairs (DCA) asked for another opinion from the Government Unit of the Attorney General's Office. He said that is why they rendered the new opinion.

Fran Burton asked what the timeframe would be for Kristy to get back to the Board with her evaluation of this opinion and suggestions to the Board. Sarah Wallace stated that she thought she would probably be ready with some suggested text by May depending on when DCA releases their analysis.

M/S/C (Bettinger/Olinger) to let the rulemaking expire and bring it back at the will of the Executive Committee working with staff at the time that they deem necessary. There was no public comment. The motion passed unanimously.

AGENDA ITEM 2(B): Discussion and Possible Action Regarding Adoption of Proposed Amendments to Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

No discussion or action taken.

AGENDA ITEM 3(A): Discussion and Possible Action Regarding Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to Add Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

Ms. Wallace reported that at the February 2011 Board meeting the Board approved regulatory language and staff filed the rulemaking with the Office of Administrative Law (OAL) on September 27, 2011. The 45 day public comment period began October 7, 2011 and ended November 21, 2011. A regulatory hearing was held on November 22, 2011 in Sacramento.

The Board received comments from the California Association of Oral and Maxillofacial Surgeons (CALAOMS), the California Dental association (CDA), and the California Academy of General Dentists (CAGD). There were five general comments. CALAOMS and CDA had generally the same comments and were summarized together.

1. Comments Regarding Fingerprinting Requirement:
Both CDA and CALAOMS commented that the requirement for out-of-state practitioners to provide fingerprints to the Board seemed excessive and unnecessary. Both organizations commented that the oversight of the sponsoring entities and remaining documentation the practitioner would be required to submit proving licensure and good standing in another state would be sufficient to ensure the professional quality of the practitioner.

Staff recommended rejection of this comment. The requirements for out-of-state practitioners to submit fingerprints as part of the application process is reasonably necessary in order for the board to verify that an applicant is "in good standing" as required by Section 901, including the requirement of Section 901(b)(1)(B)(i) that the applicant has "not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under [Code] Section 480." Section 480 authorizes a board to deny licensure based on an applicant's conviction of a substantially-related crime or the commission of an act substantially-related to the qualifications, functions or duties of a licensed dentist. A criminal background check cannot be effectuated if the board does not have the appropriate personal identifying information. Further, the board is authorized to require applicants to furnish fingerprints for criminal background checks under Business and Professions Code Section 144 and to require disclosure of Social Security Numbers for all other applicants under Section 30 of the Business and Professions Code. Further, Section 901(b)(1)(B)(iii) requires a health-care practitioner to agree to comply with all applicable practice requirements set forth in Section 901 and the board's applicable regulations. This form, with its accompanying attestation provisions, would provide the mechanism to effectuate such an agreement.

Currently, the Dental Board of California requires applicants and licensees, for whom an electronic record of fingerprints does not exist, to provide fingerprints for a background check before issuance of a license. The protection of the public is the Board's highest priority when exercising its licensing, regulatory, and disciplinary functions. This proposal is consistent with the Board's priority of protecting the public.

M/S/C (Burton/Morrow) to accept staff's recommendation to reject this comment.

Public comment: Bill Lewis, California Dental Association (CDA), we defer to the Board's discretion on this item. CDA feels that it is a balancing act to maintain protection of the public while at the same time not putting up barriers that make it difficult to recruit personnel to staff these volunteer events. While CDA understands where staff's recommendation is coming from, they see these as temporary visits being overseen by a sponsoring entity that will also be registering with the Board giving some level of oversight in addition to verification that they are dually licensed in another state. CDA felt that additionally requiring a full background check with fingerprints would deter many individuals from volunteering.

Dr. Bettinger commented that they are not practicing alone at these events. They are surrounded by peers and the sponsoring entity staff. Dr. Bettinger stated that we have probationers working these events as part of their community service who would not pass a background check. He said that he thinks that there is very little risk when they are participating in these supervised public events and that it might hinder people from volunteering.

Ms. Shellans stated that her concern is that not all states require a background check for licensure and if we're going to allow them to come into our state and essentially practice dentistry without a license, they should at least meet the same standards as our licensees have to meet. That is the argument that other agencies and the Department have raised with respect to fingerprinting, that the playing field should be level and the public be protected at the same time.

Ms. Wallace stated that the other Healing Arts Boards within the Department are proposing regulations similar to this. She noted that the LiveScan requirement would only be for the first time a

participant volunteers. The records would be kept for future events. Dr. Le asked if we know which states require a fingerprinting/LiveScan for licensure. Ms. Shellans responded that a survey has not been done in a while but she knows that not all states require fingerprinting/LiveScan.

Dr. Morrow stated that LiveScans must be done in California so what do out-of-state dentists do in or to fulfill the LiveScan requirement? Ms. Shellans stated that they must send in a hard card which is converted into an electronic record. This process only has to be done once as the record is kept on file. The regulation does not require LiveScan; it requires an electronic fingerprint submission.

Dr. Casagrande asked who has the right to deny an out-of-state practitioner if something comes back from the fingerprinting. Ms. Shellans stated that it is at the discretion of the Board whether or not they make a denial, it is on a case by case basis and the applicant has the right to appeal. Expedited hearings are done for these appeal cases.

The motion passed with 11 ayes and 1 no.

2. Comments Regarding Continuing Education Requirement:
Both CDA and CALAOMS commented that the requirement for an out-of-state practitioner to provide documentation of 50 hours of continuing education within the previous two years of the date of the application seemed excessive, burdensome, and arbitrary. Most, if not all, states require continuing education as a condition of licensure, which is considered proof that the practitioner's license is valid and in good standing. The applicant's valid and current license, in good standing in another state, should be taken as sufficient evidence that the applicant maintains the continuing education necessary to provide competent dental care.

Staff recommended acceptance of this comment and recommended deleting the requirement for an out-of-state practitioner to provide proof of completion of 50 hours of continuing education within two years of the date of his or her application. Staff recognized that this requirement may be unnecessary and may cause an undue burden upon the out-of-state practitioner.

M/S/C (Dominicis/Olinger) to accept staff's recommendation. The motion passed unanimously.

3. Comments Regarding Application Fee for Out-of-State Practitioners:
Both CDA and CALAOMS commented that the proposed $100 application fee was high and could serve as an impediment to participation. Both organizations recommended that the Board adopt an application fee of $25, like that of the Medical Board of California.

Staff recommended acceptance of the comment that the fee should be lowered so as not to impede participation from out-of-state practitioners at sponsored events. When the regulations were initially drafted it was unknown how many sponsors of free healthcare events and how many volunteer out-of-state licensees may apply to the Board as a result of these regulations. Initially, the Board estimated that it would receive at least 250 applications per year from out-of-state dentists seeking authorization to provide services at sponsored health care events. In order for the Board to absorb the workload associated with processing the requests for authorization from the out-of-state dentists, the Board would have needed to charge a $100 non-refundable processing fee to offset the costs associated with staff's processing of the application.

After further evaluation, staff believes that the estimated number of applications the Board would receive each year from out-of-state practitioners would be significantly lower. Staff now estimates that the Board would receive approximately 75 applications per year from out-of-state dentists seeking authorization to provide services at sponsored free health care events. To absorb the workload associated with processing 75 applications per year, the Board would need to charge a $30 non-refundable processing fee per application. Staff recommends modifying the text accordingly.

M/S/C (Afriat/Morrow) to accept staff's recommendation. The motion passed unanimously.

4. Comments Regarding Requirement to Provide Written Notice to Each Patient:
At the regulatory hearing held on November 22, 2011, Mr. Fred Noteware, representing both CDA and CALAOMS, commented that the organizations were concerned with the provisions contained in 1023.19 regarding the written notice requirement for each patient. They felt that the separate notice before each treatment was burdensome and would be an impediment to efficient care. Both organizations commented that the notice should be part of the general waiver and consent and suggested that the names and states of each out-of-state dentist that may provide care could be added to the waiver and consent. Currently the waiver and consent informs the patient that they may be seen by student dentists or student hygienists working under the direct supervision of their instructors; patients are required to sign this waiver and acknowledgment. Mr. Noteware commented that it would be better to get the waiver signed by all potential patients in advance and not patient by patient at the time of service.

Staff recommended rejection of this comment. The notice is not considered a waiver. Providing written notification to each patient that the practitioner is licensed outside of the State of California does not relinquish or surrender the patient's privilege to health care services provided by the out-of-state practitioner. The out-of-state practitioner is only required to provide written notification to each patient, in at least 12-point font and include information regarding licensure, as specified, and a disclosure that the Dental Board of California has only authorized the practitioner to provide services at that particular health care event for a period not to exceed 10 days. The notice may be provided to the patient on a form of the practitioner's choosing. Statutory law makes no provision for notifying the affected public that out-of-state practitioners are not California licensed dentists in good standing. A member of the public would assume, unless this notice is provided, that dentists providing dental services in California would be duly licensed and regulated by the Dental Board. The protection of the public is the Board's highest priority when exercising its licensing, regulatory, and disciplinary functions. This proposal is consistent with the Board's priority of protecting the public. The requirement of written notification provides transparency to the public that individuals performing dentistry at the sponsored event are licensed in good standing by another state, district or territory, the license numbers, effective dates of each license and issuing agency, and the dates that the out-of-state practitioner is authorized to practice by the board. This proposed regulation further specifies a statement of disclosure that the Dental Board has only authorized the practitioner to provide services at the sponsored event and for a period not to exceed 10 days. This proposed section provides disclosure to the public that practitioners are licensed by another governmental agency, provides specific information regarding those licenses, and informs the public that practitioners may only practice pursuant to the specific provisions of Section 901.

M/S/C (Burton/Olinger) to accept staff's recommendation to reject the comment.

Dr. Olinger asked for clarification regarding whether or not the notice is considered a waiver. Ms. Shellans stated; for clarification, the notice is not a signed consent or waiver, it is simply a notice that provides the patient with the name, license number, state of practice and other pertinent contact information so that should complications arise, the patient is able to reconnect with the treatment provider.

Public comment:
Dr. Guy Acheson, Academy of General Dentistry, stated that simply handing out a piece of paper seems problematic as so many of the consumers at these events do not speak English so to have this piece of paper in English handed to them as they walk into an operatory won't have much meaning.

Ms. Shellans stated that the idea is that they have the information. If they want to they can take it to someone to translate it for them.

Bill Lewis, California Dental Association (CDA), stated that CDA felt that having only the out-of-state practitioners hand out a separate piece of paper creates a sort of stigma on them and might make recruitment harder by discouraging participation. Dr. Casagrande asked if CDA sponsored any of these events. Mr. Lewis responded that CDA is partnering with an organization called MOMS to sponsor events in Modesto in May and Sacramento in August. Dr. Casagrande asked who is liable if something goes wrong at one of these events the sponsor or the individual practitioner. Mr. Lewis stated that it is his understanding that both the individual and the sponsoring entity are responsible but he is not an expert on this issue. Dr. Le suggested having the event organizer post a sign at each station that clearly states the name of the dentist, the license number, and the state where the dentist is licensed. She commented that then there is no discrimination or singling out of any person because every practitioner would have a sign. Dr. Dominicis commented that when he participates in the events he must provide information regarding the status of his license along with a copy of his malpractice insurance. Dr. Dominicis further commented that at these events the Doctors move from station to station and don't really stay in the same place so Dr. Le's suggestion might not work.

A vote was taken on the motion. The motion carried with 11 ayes and 1 no.

5. Summary of Comments Received from the California Academy of General Dentists and Staff Recommendations:

At the regulatory hearing, Dr. Acheson, President-elect of the California Academy of General Dentistry, verbally presented a letter from the President of the California Academy of General Dentistry in support of the regulations. Dr. Acheson read the letter aloud and entered the letter into the rulemaking. Dr. Acheson stated that he had participated in events in other states in the past. He specifically pointed out that he had participated in an event at the Louisiana State University School of Dentistry where dental care was provided to underserved residents of New Orleans, LA. The event gathered more than 140 volunteers from around the country to provide care for over 180 patients from New Orleans. Additionally, Dr. Acheson stated that he had participated in an event at the San Diego Convention Center with approximately 30 other California licensed dentists to provide over $80,000 in free dentistry work to about 125 veterans in San Diego, CA. He stated that these proposed regulations are important to authorize more volunteers from other states to assist with providing important dental care services at these health care events. The California Academy of General Dentistry wanted to clearly emphasize that the proposed regulations be limited to licensed dentists to volunteer their services in California. The organizations believe that for public health and safety reasons, non-traditional therapists should not be included in the regulations.

There was no staff recommendation as this was not considered an adverse comment and the Board's regulations are only applicable to licensed dentists.

Katie Dawson, California Dental Hygienists Association (CDHA) commented that a portion of CAGD's letter refers to "mid-level" providers which are not a recognized category in California. She stated that she is concerned that anyone not listed would not be included in the volunteer effort because she knows that dental hygienists are actively involved in these programs. Ms. Dawson stated that she thinks it would set a bad precedent to start excluding certain groups from the legislation.

AGENDA ITEM 3(B): Discussion and Possible Action Regarding Adoption of Proposed Additions to Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

Ms. Wallace stated that the proposed modified text was included in the packet for the Board's review. Staff had made some technical changes as well as deleting the requirement for continuing education and changing the fee. Staff also added a couple of clarifying statements under section 1023.17. One statement was; *Authorization shall be obtained for each sponsored event in which the applicant seeks to participate*. Staff renamed the form and added in section 1023.17(a)2 regarding

fingerprinting, a specifying statement that says; *This requirement shall apply only to the first application for authorization that is submitted to the board by the applicant*. In section 1023.17(C), the Denial of Request for Authorization to Participate, staff added, as a condition of denial; *1(G)The board has been unable to obtain a timely report of the results of the criminal history check.* Ms. Shellans stated that she had requested an addition be made to the definition of "out-of-state practitioner", section 1023.15(b); the word *active* be added to the status of their license.

M/S/C (Morrow/Burton) to modify the text in response to the comments and recommendations received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18 as noticed in the modified text relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events. The motion passed unanimously.

Ms. Wallace noted that staff is aware of the urgency in moving this rulemaking along and will notice the modified text for 15-day public comment period on March 2nd. Staff recommended that the Board hold a special teleconference meeting, if needed, to respond to any adverse comments that may be received during the modified text public comment period to expedite the adoption of these regulations.

Committee Meetings commenced at 2:10 p.m.

The full Board reconvened at 5:25 p.m.

AGENDA ITEM 4: Subcommittee Update of Universidad De La Salle's Renewal and Site Review

Dr. Whitcher acknowledged Dr. McGrath from the Universidad De La Salle. Dr. Morrow reported that upon completion of the review by the subcommittee, the Universidad De La Salle's application for renewal is complete. The school was notified and a site visit was scheduled for March 12-16, 2012. The onsite inspection and evaluation team was selected in accordance with Section 1024.6 of the California Code of Regulations. The site team members are: Dr. Timothy Martinez, Dr. Ernest Garcia, Dr. Nelson Artiga, Dr. Steven Morrow and Ms. Erica Cano.

A pre-site visit meeting of the subcommittee with the site team members and the Executive Officer was held on Friday, March 2, 2012 at the Dental Board office in Sacramento. The team developed a schedule for the site visit which was submitted to the Universidad De La Salle in advance.

Dr. McGrath commented that they have made all of the arrangements for travel and accommodations and are eagerly awaiting the arrival of the site team.

Dr. Le and Dr. Morrow thanked Dr. McGrath for providing them with the requested documentation and information.

Missy Johnson with the law firm of Nielsen-Merksamer, stated that she was at the meeting on behalf of Dr. McGrath-Bernal.

AGENDA ITEM 5: Discussion and Possible Action Regarding a Response to the American Dental Association's (ADA) Formal Request to Allow Out-of-State Licensed Dentists to Conduct Live-Patient Continuing Education Classes at the 2012 ADA Annual Session as Permitted by Business and Professions Code 1626(d)

Mr. DeCuir, Executive Officer, reported that on January 10, 2012, the American Dental Association (ADA) formally requested that the Dental Board again allow out-of state licensed dentists to conduct live-patient continuing education classes at the 2012 ADA Annual Session under exemption (d) to Business and Professions Code 1626 which reads: *The practice of dentistry by licensed dentists of other states or countries in conducting or making a clinical demonstration before any bona fide dental or medical society, association, or convention; provided, however, the consent of the Dental Board of California to the making and conducting of the clinical demonstration shall be first had and obtained.* M/S/C (Casagrande/Morrow) to approve the ADA's request to allow out-of-state licensed dentists to conduct live-patient continuing education classes at the 2012 ADA Annual Session. The motion passed unanimously.

Relating to the second Board action requested by staff, Ms. Shellans, legal counsel, commented that in order to delegate authority to the Executive Officer for future requests related to Business and Professions Code Section 1626(d), the Board would need to initiate a rulemaking to add this delegation authority to the duties of the Executive Officer outlined in CCR, Section 1001. This item would need to be put on the agenda for a future meeting.

Public Comment for Items Not on the Agenda

There was no additional public comment.

The meeting recessed at 5:38 p.m. and will resume at 8:00 a.m. on Friday, February 24, 2012.

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STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
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Dental Board of California
Meeting Minutes
Friday, February 24, 2012

Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101
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Members Present:
Bruce Whitcher, DDS President
Huong Le, DDS, Vice President
Fran Burton, Secretary
Steven Afriat, Public Member
John Bettinger, DDS
Stephen Casagrande, DDS
Luis Dominicis, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA
Suzanne McCormick, DDS
Steven Morrow, DDS
Thomas Olinger, DDS

Members Absent:

Staff Present:
Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Kim Trefry, Enforcement Chief
Teri Lane, Supervising Investigator I
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers, Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

President Whitcher called the meeting to order at 8:05 a.m. Secretary Burton called the roll and a quorum was established.

AGENDA ITEM 6: Approval of the Full Board Meeting Minutes from November 7-8, 2011 and December 12, 2011

M/S/C (Afriat/McCormick) to approve the November 7-8, 2011 Full Board Meeting minutes. The motion passed unanimously. M/S/C (McCormick/Le) to approve the December 12, 2011 teleconference meeting minutes. There was no public comment. The motion passed unanimously with 2 abstentions.

AGENDA ITEM 7: President's Report

Dr. Whitcher reported that he came to Sacramento 3 times in January to attend Senate meetings. After the Senate hearing on January 9th, 2012, Dr. Whitcher, Dr. Le and Ms. Burton stopped by

Assemblyperson Mary Hayashi's office to thank her and her chief of staff for their help and support during our Sunset Review process. Following the January 17, 2012 Senate hearing Dr. Whitcher introduced himself to Senator Price and thanked him for his help on Sunset Review and on January 27, 2012 after the Senate hearings he introduced himself to Bill Gage and Rosielyn Pulmano and thanked them for their help during our Sunset Review process. Dr. Whitcher thanked all the sub-committee members for their continuing work on all of our projects. He thanked staff for assisting him with preparations for the Board meeting. Dr. Whitcher gave special thanks to Dr. McCormick for her service as Board liaison to the EFCS committee and presented her with a crystal plaque. Dr. Whitcher also gave special thanks to Richard DeCuir, Executive Officer of the Dental Board for delaying his retirement in order to continue serving the Board.

AGENDA ITEM 8: Executive Officer's Report

Mr. DeCuir reported that the new 2012 Dental Practice Act is available. The Department of Consumer Affairs has a new Director, Denise Brown, new Chief Deputy Director, Awet Kidane, and new Deputy Director of Board/Bureau Relations, Reichel Everhart. Mr. DeCuir informed everyone that Donna Kantner; Licensing Manager will be retiring on February 29, 2012. Dawn Dill the current Dental Assisting Program Manager will be taking over management of the Licensing unit. Mr. DeCuir reminded all the Board members that their annual form 700's are due by April 1, 2012. Mr. DeCuir reported that for the first time ever we are at a full complement of staff. He thanked Kim Trefry, Nancy Butler and Teri Lane, and their investigators for their efforts leading to the December 11, 2011 sentencing of Mario Pacheco to the maximum of 3 years, 8 months in prison for his role in the unlicensed practice of dentistry. Kyle Clanton served as the lead investigator on that case. Juan Pedro Hernandez was arrested February 2, 2012 on felony charges relating to unlicensed practice of dentistry in Santa Rosa. Mr. DeCuir thanked Greg Salute and Teri Lane, for speaking to the senior dental students at UCSF Dental School on February 10, 2012. They will also be speaking to the dental students at Loma Linda University Dental School on March 1, 2012.

Agenda items were taken out of order to accommodate speakers.

AGENDA ITEM 10: Budget Reports: Dental Fund & Dental Assisting Fund and Discussion Regarding the Need for a Possible Fee Increase

Mr. DeCuir reported that as of December 31, 2011, the Dental Board had spent approximately 44% of its Fiscal Year (FY) 2011-12 Dentistry budget appropriation (roughly $4.9 million). In the Dental Assisting appropriation, the Board had spent approximately 43% (roughly $717, 000). When these figures are compared to figures from the same time period for FY 2010/11 it indicated an upward trend in spending for both funds.

In January 2011, a hiring freeze was implemented by the Governor, which allowed for filling only the most critical positions. Additionally, the hiring freeze set budgetary reduction goals for each Department. On November 1, 2011, the Department of Consumer Affairs met these goals. With these goals met, the hiring freeze was lifted for the Department, and the Board began agressively recruiting candidates for all vacant positions. As of February 1, 2012, the Dental Board of California had filled all of it's vacant postions (with three Investigators in background). With those filled positions, came an increase in both Personnel Services and Operating Expense and Equipment (OE&E). This is the primary reason for the upward trend in spending, and it is anticipated this trend will continue into future years.

Over the past 10 years the Board's expenditures have been roughly equivalent to the Board's revenues, hovering just below $9 million. However, in fiscal year 2010-2011, as part of a Department wide Budget Change Proposal called the Consumer Protection Enforcement Initiative (CPEI), the Board received 12.5 new positions (11.0 permanent) along with an expenditure increase of approximately $1.2 million. Currently, all positions are filled. This has resulted in the Board spending an additional $1.2 million in excess of its revenues. While the Board still has $4.4 million in outstanding General Fund loans yet to be repaid, even with the loan repayment the Board

will likely be out of revenue in fiscal year 2013-2014. With approximately 37,500 active licensed dentists, the Board will likely be looking at a biennial fee increase of approximately $40.00, raising the biennial license fee to $405.00 between years 2013-14 and 2014-15. Staff will present the Board with more definitive statistics at the next Board meeting with a request for Board approval to move forward with a regulatory package to increase fees in order to keep the Board solvent.

Dr. Whitcher asked if staff wanted to begin the regulatory process for the fee increase. Mr. DeCuir replied, yes.

Dr. Paul Reggiardo, California Society of Pediatric Dentistry, asked if the fee increases were for all licensees or just dentists.

Mr. DeCuir responded tht we are looking at initial and renewal license fees and we will be looking at other fees as well.

AGENDA ITEM 9: Update on Dental Hygiene Committee of California (DHCC) Activities

Alex Calero, President of DHCC, thanked Mr. DeCuir for inviting the DHCC to participate in the meeting. Mr. Calero reported that in December 2011 former DHCC President Rhona Lee resigned as did committee member Miriam De La Roi. The Governor recently appointed Evangeline Ward, RDH, to the DHCC. Mr. Calero reported that staff and the committee members have been working very hard to get their own regulations in place. They have divided the project into 3 phases with phase 1 to be completed this year, phase 2 to begin this year and phase 3 scheduled to begin in 2013. Mr. Calero extended an invitation to the Board and staff to attend one of the next DHCC meetings being held April 16-17 in San Diego or December 3-4 in Sacramento. Dr. Olinger asked what the typical number of enforcement actions per month are. Mr. Calero stated that he doesn't know those statistics off the top of his head. Mr. Salute, legal counsel stated that they receive about 5-6 each year and turnaround time is within DCA guidelines. Dr. McCormick asked Mr. Calero to expand upon the regulatory packages that the DHCC is putting forward. Mr. Calero stated that there were no previous regulations so they are starting from scratch. Phase 1 is largely non controversial regulations that they are mirroring from when the DHCC was COMDA. The 2nd phase will be regulations that may be more controversial and would require creating more justifications and the 3rd phase would be those regulations which the DHCC does not currently have the statutory authority to implement. Dr. Whitcher asked if the DHCC was planning on seeking statutory authority through legislation for phase 3. Lori Hubble, Executive Officer of the DHCC, stated that they just got an author for the proposed bill to obtain statutory authority.

AGENDA ITEM 11: Update Regarding Dental Board of California's Strategic Plan

Dr. Whitcher reported that based on feedback received during our Sunset Review process, he drafted an updated version of the Strategic Plan which included action items and areas for setting target dates for consideration by the Board at its August 2011 meeting. Due to time constraints, the item was held over for consideration at a future meeting in 2012. In the interim, Dr. Whitcher asked for Mr. DeCuir and his staff's input. Dr. Whitcher assigned a subcommittee of Dr. Le and Dr. Bettinger to work with staff to develop possible changes to the goals and objectives before the item is brought before the full Board for review and consideration by the end of the year.

AGENDA ITEM 12: Examination Committee Report

Dr. Casagrande, Chair of the Examination Committee reported that a quorum was established and the minutes of the November 7, 2011 meeting were approved. He stated that in the review of the Dental Assisting examination statistics, some headway is being made on the pass rate of the written exam but this still may be a barrier for those trying to get their Registered Dental Assistant (RDA) license. Dr. Casagrande reported that the committee came up with a recommendation to direct staff to produce an exit survey for the RDA exam. He further reported that as the new liaison to the Western Regional Examination Board (WREB), Dr. McCormick will pursue a seat on the WREB Board of Directors. Dr. McCormick suggested that in order to broaden the availability of

competency testing, the Board may want to look at other testing opportunities such as Southeast Regional Testing Agency (SRTA), Central Regional Dental Testing (CRDTS) and the American Board of Dental Examiners (ADEX). Dr. Casagrande suggested possibly inviting them to speak at a future Board meeting. M/S/C (Afriat/Downing) to accept the Examination Committee report. The motion passed unanimously.

Dr. Guy Acheson, Academy of General Dentistry, applauds the Board for looking out for the students by creating the exit survey and examining why the pass rates are lower than expected. Dr. Acheson voiced his concern that the lowest pass rate is for the RDAEF written examination. He would like the Board to compare the pass rates in the public versus private institutions to be sure that private institutions are not taking advantage of their students.

AGENDA ITEM 13: Examination Appeals Committee Report

There were no examination appeals.

AGENDA ITEM 14: Licensing, Certification & Permits Committee Report

Dr. Olinger, Chair of the Licensing, Certification and Permits committee reported that a quorum was established and the minutes of the November 7, 2011 meeting were approved. There was one candidate granted replacement of a cancelled license. He reported that Ms. Johnson gave an update of all the statistics. There is still a lack of evaluators and staff was directed to try to find new ways of recruitment. Dr. Whitcher stated that calibration courses are given twice a year in an effort to recruit new evaluators. Unfortunately, many attendees are just there to gain continuing education units. M/S/C (Afriat/Bettinger) to approve the recommendation of the LCP committee to replace the cancelled RDA license of candidate ABV and accept the committee report. The motion passed unanimously.

AGENDA ITEM 15: Dental Assisting Committee Report

Judith Forsythe, Chair of the Dental Assisting committee reported that a quorum was established and the minutes of the November 7, 2011 meeting were approved. Ms. Forsythe reported that there are currently 34 pending applications for programs and course providers. She stated that the RDAEF survey was implemented and over 100 responses were received. Ms. Forsythe reviewed the committee's discussion regarding splitting the RDAEF examination. M/S/C (Forsythe/Burton) to split the RDAEF examination into two components with a time limit of 2 years from the date of the prior failure and direct staff to begin the rulemaking process. The motion passed unanimously. (Morrow/Afriat) to accept the Dental Assisting committee report. The motion passed unanimously.

Dr. Whitcher stated that this will be the last meeting of the Dental Assisting Committee; these items will be taken over by the Dental Assisting Council.

AGENDA ITEM 16: Discussion and Possible Action Regarding the Dental Assisting Committee's Recommendations to Appoint Dental Assisting Council Members

As a result of the Sunset Review process, legislation was signed by Governor Edmund G. Brown Jr. (SB 540, Chapter 385, 2011 statutes) which required the Dental Board of California (Board) to establish a seven member Dental Assisting Council (Council) which will consider all matters relating to dental assistants in California and will make appropriate recommendations to the Board and the standing Committees of the Board. The members of the Council shall include the registered dental assistant member of the Board, another member of the Board, and five registered dental assistants.

A subcommittee (Dr. Whitcher and Ms. Forsythe) was formed to review all initial applications for membership on the Council; and to bring recommendations to the Board for consideration.

Ms. Forsythe reported that the Board received 16 applications from people interested in serving on the Council. All applications were distributed to the Board in it's meeting packet. She asked the Board to review the qualifications and terms of office in accordance with Business & Professions

Code, Section 1742 when considering the Subcommittee's recommendations and it's appointments to the Council. Dr. Whitcher reported that the subcommittee reviewed all applications and conducted telephone interviews of those candidates they felt were best qualified. The Subcommittee's recommendations were as follows:

M/S/C (Afriat/Dominicis) to appoint Denise Romero, RDA to fill the position on the Council designated for a faculty member of a registered dental assisting education program approved by the Board. Ms. Romero's term is for one (1) year. There was no public comment. The motion passed unanimously.

M/S/C (Dominicis/Afriat) to appoint Emma Ramos, RDA to fill the position on the Council designated for a faculty member of a registered dental assisting education program approved by the Board. Ms. Ramos' term is for three (3) years. There was no public comment. The motion passed unanimously.

M/S/C (Casagrande/Olinger) to appoint Teresa Lua, RDAEF to fill the position on the Council designated for a registered dental assistant in extended functions who is employed clinically in a private dental practice or public safety net or a dental health care clinic. Ms. Lua's term is for four (4) years. There was no public comment. The motion passed unanimously.

M/S/C (Morrow/Afriat) to appoint Anne Contreras, RDA to fill the position on the Council designated for a registered dental assistant who is employed clinically in a private dental practice or public safety net or a dental health care clinic. Ms. Contreras' term is for two (2) years. There was no public comment. There was no public comment. The motion passed unanimously.

M/S/C (Afriat/McCormick) to appoint Pamela Davis-Washington, RDA to fill the position on the Council designated for a registered dental assistant who is employed clinically in a private dental practice or public safety net or a dental health care clinic. Ms. Davis-Washington's term is for three (3) years. There was no public comment. The motion passed unanimously.

Statute requires that the dental assistant member of the Dental Board serve on the Dental Assisting Council, as well as another member of the Board. M/S/C (Afriat/McCormick) to appoint Ms. Judith Forsythe, RDA and Board member as a member of the Council; and Bruce Whitcher, DDS and Board President as a member of the Council. There was no public comment. The motion passed unanimously.

Public Comment

Dr. Lori Gagliardi, representing CADAT, praised the Subcommittee for it's integrity in the process of reviewing the applications and recommending candidates for the Council.

Bill Lewis, representing California Dental Association, complimented the Board on it's effort to move quickly and efficiently in appointing the Dental Assisting Council members. His organization is looking forward to how this new Council will unfold.

There was no additional public comment.

AGENDA ITEM 17: Legislative and Regulatory Committee Report

Fran Burton, Chair of the Legislative and Regulatory committee reported that a quorum was established and the minutes of the November 7, 2011 meeting were approved. Ms. Burton reported that the committee reviewed many bills, those bills that they had already taken a position on did not change; AB 127 – watch, AB 991 – watch, SB 103 – watch, SB 544 – previously watch – returned to Senate, essentially dead now. There was a lot of discussion during the committee meeting surrounding SB 694. Ms. Wallace reported that SB 694 would create the Statewide Office of Oral Health with a dentist as its director. SB 694 would also establish a study to assess the safety,

quality, cost-effectiveness, and patient satisfaction of expanded dental procedures for the purpose of informing future decisions about how to meet the state's unmet oral health need for the state's children. Ms. Burton stated that during the committee meeting she pointed out how many times this bill has been amended. The bill is currently in the Assembly awaiting its first hearing. We had a watch position on the bill and it was suggested and accepted to continue with the watch position for SB 694. Dr. Casagrande asked if the Board will still have an opportunity in the future to weigh in on this bill. Ms. Burton stated that it is not anticipated that this bill will even have its first hearing before our next meeting in May. She stated that the sponsors will stay in contact with the Board. Ms. Burton said she will attend the hearings and keep Mr. DeCuir up to date. If the bill starts to move too quickly we can hold a teleconference.

Katherine Scott, Children's Partnership, stated that SB 694 will likely be heard in June.

Dr. McCormick asked how the public safety issues are being addressed. Ms. Scott answered that the author's office is bringing stakeholders together including the Dental Board to collaborate. In addition, the fact that it is a university based study provides certain safety protocols.

Ms. Burton brought up Dr. Morrow's concern about where the funding for the university based study would come from. Ms. Scott answered that they are looking at private funding and any available educational funding and for the director's position they are looking toward some federal and state funding.

Dr. Olinger asked what the relationship is between the Children's Partnership and the PEW Foundation. Ms. Scott stated that the PEW Foundation is funding this project for the Children's Partnership. The Children's Partnership has had a long-standing goal to meet access to care needs for children particularly focusing on dental health over the past few years.

Dr. Bettinger commented that the mission of the Dental Board is to protect the health and safety of consumers, license healthcare professionals, enforce the Dental Practice Act and strive to enhance the education of consumers. He noted that in his previous work with under-served populations he came to believe that prevention is what is most important and that is achieved through education. Dr. Bettinger suggested adding language to the bill specifying that general and special funds may not be used so that it is clear that the Dental Board's licensing fees will not be used. He also stated his concern that the ultimate goal of the study is to develop a mid-level provider with a minimum amount of training and education creating two very different standards of care. Dr. Bettinger stated that he agrees with the San Diego Dental Health Foundation's suggestion to change the study so that it focuses on the capacity, feasibility and utilization of our existing RDA's, RDAEF's, RDH's and RDHAP's. Ms. Burton asked Dr. Bettinger what he is asking the Board to do. Dr. Bettinger responded that he would like to protect our funding by adding Federal Funding and making sure that they will not use special funds (i.e. our licensing fees). He would like the Board to take the position of opposing this bill unless amended to include; special funds should not be tapped and the study be limited to utilizing our existing workforce and determining if we already have the capacity in our workforce to meet the demand. Ms. Burton stated that she would open that up for discussion but without everyone having the information that Dr. Bettinger read they may not be prepared to make a decision. Dr. Morrow asked Mr. DeCuir to explain how the special funds might be used for the study. Mr. DeCuir stated that his only concern is that legislation is introduced to take money out of our special funds at a time when the Board is facing a shortage of funds and is looking to increase licensing fees just to remain solvent. He said he has made this clear to the sponsors. Ms. Scott stated that she wanted to address the 'public funds' issue. She noted that the appropriations committee suggested that they use the phrase 'public funds' rather than just 'federal funds' so as not to preclude others such as counties etc. She further stated that in the committee, they, as sponsors, committed to not attaching or going after any funds related to the Dental Board and only asking for participation. Mr. Afriat commented that he found a lot of merit in what the author of this bill is attempting to do so he probably would not support a motion that had the word "opposed" in it.

He suggested that we retain the watch position or possibly let the committee know that we may take a position of 'support' if amended. Ms. Burton stated that she respectfully disagrees because this bill is still a work in progress. Mr. Afriat stated that he wouldn't mind the watch position but he didn't want to go down the path of an opposed position. Ms. Burton stated that she would ask that the Board's concerns be heard by the sponsors attending this public meeting and go forward from there. Dr. Bettinger agreed to go with the majority. Mr. Afriat commented that perhaps we could maintain our watch position but ask that staff send a letter to Senator Padilla expressing the Boards concerns about these 2 issues. Ms. Shellans reminded the Board that they have a motion recommendation from the committee to 'watch' so you would need to split that into 2 separate items. Mr. DeCuir stated that as staff to the Board it is not his intent to get involved in a policy decision however, in looking at the number of amendments this bill has already taken in its house of origin, I believe it may be prudent just to 'watch' at this time.

M/S/C (Afriat/ McCormick) to accept the Legislative and Regulatory committee report. The motion passed unanimously.

Ms. Scott commented that the Partnership completely and wholeheartedly committed to prevention. She further stated that she has not seen the language that Dr. Bettinger read but she is sure the sponsor would like to see it. (Someone handed her a copy) She stated that she will make sure the sponsor gets a copy.

Dr. Guy Acheson commented that he thinks the Board should take a position of "oppose unless amended." There are many merits to this bill. The idea of a Dental Director is a good one but the mid-level provider is bad. Dr. Acheson stated that as he understands it the only way in California for a new workforce category to be tested is through the Office of Statewide Health, Planning and Development (OSHPD). A study of our existing workforce would have great value. Dr. Acheson also feels that private funding has a great potential for private agendas. Dr. McCormick stated that all the information received today supports a 'watch' position.

Dr. Paul Reggiardo, California Society of Pediatric Dentists (CSPD), respectfully disagreed; he feels that this bill is not a scope of practice bill but one which establishes the Statewide Office of Oral Health, a state Dental Director, and a research study. He stated that the CSPD supports this bill and in his opinion, the Board should take a 'watch' position.

Katie Dawson, California Dental Hygienists Association (CDHA) is concerned that we are limiting ourselves by restricting the new Dental Director position to only Dentists. Another concern of CDHA is the creation of a new workforce category when the current workforce is under-utilized. They would also like to see the focus expanded beyond just children. Ms. Dawson stated that she has brought up on many occasions her concern that there is no Dental Hygiene representation on the Dental Board and hasn't been for almost 4 years. Dr. Bettinger commented that he tried to get a hygienist appointed but it's the Governor's appointment and we have nothing to do with it.

Rebecca Downing commented that there is no wording in the bill about creating a new licensure category. She suggested that maybe we should propose expansion of the language to ensure what goes on in the study including the study of our current workforce. Dr. Casagrande reminded everyone of the UOP study where the Board wrote a letter to voice their concerns. He suggested that maybe we should send a similar letter to the author.

M/S/C (Burton/Olinger) to take a watch position on SB 694. The motion passed unanimously.
M/S (Bettinger/Dominicis) to send a letter to the bills' authors that the Board is currently watching the bill and recommend that language be added to prohibit special funds from being used to fund the study and emphasize that the study should primarily focus on the utilization of existing workforce categories and the potential for them to address the healthcare needs of Californians.

Ms. Burton stated that not everyone has seen the language that Dr. Bettinger is referring to and she is not comfortable accepting a motion before she has had a chance to review all of the information.

Dr. Olinger commented that he would like to see a letter sent to the authors from the Dental Board outlining the priorities that the Dental Board would like to see in the study.

Bill Lewis, California Dental Society (CDA), commented that CDA will be holding a special House of Delegates meeting next week specifically to revisit CDA's position on the Access to Care report. He will be better able to report CDA's position at the next Board meeting. Mr. Lewis stated that he thinks the Board will have a better idea of other groups' positions and a clearer view of how this bill will look at the next meeting. He suggested that it might be better to postpone discussions of sending a letter to the authors until the May meeting where some possible language might be presented for the Board's approval.

Dr. Whitcher stated that he is hearing that a letter at this time may be premature. He has been following this bill very closely. He stated that anyone can subscribe by email to receive updates as they occur. Dr. Whitcher commented that he and Fran Burton will be at the Capitol for these hearings and they will provide the Board with information. If need be the Board can hold a special teleconference meeting to address concerns.

Ms. Scott stated that the author is not moving this bill before June.

A vote was taken on the motion. Six aye votes and six opposed, the motion failed.

AGENDA ITEM 18: Enforcement Committee Report

Rebecca Downing, chair of the Enforcement Committee reported that a quorum was established and the minutes of the November 7, 2011 Enforcement Committee meeting were approved. Ms. Downing reported that the Enforcement statistics continue to improve. They are getting closer and closer to the time limit of 1½ years to close enforcement matters that DCA has requested. Ms. Downing reported that Ms. Trefry and Mr. Salute stated that they would like to do more calibration training and recruitment of experts but are hampered by travel restrictions. The committee proposed that the Board adopt the following motion; M/S/C (Afriat/McCormick) the Board finds that recruitment, training and calibration of its subject matter experts is critical to its mission of protecting the public through the Board's enforcement program, and therefore urges the Department of Consumer Affairs to facilitate the identification and training of subject matter experts by approving necessary travel for recruitment as well as for training and calibration. The motion passed unanimously.

Diversion statistics were reviewed. Ms. Downing reported that the request for new enforcement tools is still pending. Ms. Trefry reported that 80% of cases do not rise to the level of an accusation but the investigators would like some way to convey to the licensee's how and where they are lacking. She went over her report analyzing how the new tools would be utilized. The new Q2 (second quarter) report from DCA was reviewed. Ms. Downing thanked Ms. Trefry for the new and interesting data.

Dr. Olinger asked if the new enforcement tools required a legislative change. Ms. Downing stated that it requires a statutory change. Dr. Olinger asked if the Board was prepared to make a motion to request that change. Ms. Downing reported that the Board has already acted on this and will seek an author if Senate B & P doesn't act on it. Ms. Burton suggested that we follow-up with a letter of justification to the Senate B & P committee. Ms. Burton offered to work with Ms. Trefry and Mr. DeCuir to draft a letter to the Senate B & P committee outlining specific details of our request with justification.

M/S/C (Afriat/Olinger) to accept the Enforcement Committee report. The motion passed unanimously.

AGENDA ITEM 19: Update on Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

Dr. Casagrande reported that all 6 schools have participated in developing the 6 areas of the grading system. Dr. Morrow reported that 5 of the 6 focus groups have met with number 6 meeting next week. He stated that he has attended 2 of the focus group meetings and will be attending the last one next week. Dr. Casagrande reported that they are on schedule as far as implementation goes.

AGENDA ITEM 20: Report on the January 18, 2012 meeting of the Elective Facial Cosmetic Surgery Permit Credentialing Committee; and Discussion and Possible Action to Accept Committee Recommendations for Issuance of Permits

Dr. Suzanne McCormick reported that she attended the meeting of the Elective Facial Cosmetic Surgery Permit Credentialing Committee on January 18, 2012 which was held in the Dental Board's Orange Office. This was Dr. McCormick's last meeting, as Dr. Bruce Whitcher will be replacing her as Board Liaison.

Dr. McCormick reported that Dr. Brian Wong, newly appointed Committee member was sworn in and welcomed by the Committee members. For the benefit of the new members on the Committee, staff presented an overview of Business & Professions Code, Section 1638.1 relating to the EFCS Permit application process.

In closed session, the Credentialing Committee reviewed two (2) applications. According to statute, the Committee shall make a recommendation to the Dental Board on whether to issue or not issue a permit to the applicant. The permit may be unqualified, entitling the permit holder to perform any facial cosmetic surgical procedure authorized by the statute, or it may contain limitations if the Credentialing Committee is not satisfied that the applicant has the training or competence to perform certain classes of procedures, or if the applicant has not requested to be permitted for all procedures authorized in statute.

The Committee's recommendations to the Board were as follows:

1. Applicant: Dr. A.A. – Requested unlimited privileges for Category I (cosmetic contouring of the osteocartilaginous facial structure, which may include, but not limited to, rhinoplasty and otoplasty) and Category II (cosmetic soft tissue contouring or rejuvenation, which may include, but not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation).

   The Credentialing Committee recommended the Board reject A.A's application because the applicant failed to meet the minimum requirements of Business and Professions Code 1638.1 (C)(2)(B)(i): Insufficient documentation that the applicant has been granted privileges by the medical staff at a licensed general acute care hospital to perform the procedures requested in his application. The applicant would be given the opportunity to re-apply. M/S/C (Morrow/Afriat) to approve the Committee's recommendation. There was no public comment. The motion passed unanimously.

2. Applicant: Dr. Michael P. Morrissette. – Requested unlimited privileges for Category I (cosmetic contouring of the osteocartilaginous facial structure, which may include, but not limited to, rhinoplasty and otoplasty) and privileges for Category II (cosmetic soft tissue contouring or rejuvenation, which may include, but not limited to, facelift, blepharoplasty, facial skin resurfacing, or lip augmentation) limited to submental liposuction, Botox and fillers, and chemical peels.

The Credentialing Committee recommended the Board deny Category I privileges, and issue a permit limited to the following Category II procedures: submental liposuction, Botox and fillers, and chemical peels. Applicant did not submit operative reports that demonstrate training to perform all requested classes of procedures. The Committee recommended suggesting that Dr. Morrissette reapply for Category I if he would like to obtain this permit. M/S/C (Bettinger/Morrow) to approve the Committee's recommendation. There was no public comment. The motion passed unanimously.

M/S/C (Afriat/Olinger) to accept the Committee's report. There was no public comment. The motion passed unanimously.

AGENDA ITEM 21: Discussion and Possible Action Regarding Changing the November 8-9, 2012 Meeting Date

The Board discussed possible alternate dates for the November Board meeting in Los Angeles. The Board agreed to hold the Dental Board meeting December 3-4, 2012.

There was no further public comment.

The meeting adjourned at 11:18 a.m.

DRAFT

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS
STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
DENTAL BOARD OF CALIFORNIA
2005 Evergreen Street, Suite 1550, Sacramento, California 95815
P (916) 263-2300 F (916) 263-2140 www.dbc.ca.gov

Teleconference Meeting of the Dental Board of California
Meeting Minutes
Wednesday, April 11, 2012
DRAFT

Members Present:
Bruce Whitcher, DDS, President
Huong Le, DDS, Vice President
Fran Burton, Public Member, Secretary
Steven Afriat, Public Member
John Bettinger, DDS
Stephen Casagrande, DDS
Luis Dominicis, DDS
Rebecca Downing, Public Member
Judith Forsythe, RDA
Suzanne McCormick, DDS
Steven Morrow, DDS
Thomas Olinger, DDS

Staff Present:
Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Kim Trefry, Enforcement Chief
Nancy Butler, Supervising Investigator
Jocelyn Campos, Enforcement Coordinator
Adrienne Mueller, Enforcement Coordinator
Sarah Wallace, Legislative and Regulatory Analyst
Linda Byers, Executive Assistant
Kristy Shellans, Legal Counsel
Spencer Walker, Legal Counsel

TELECONFERENCE LOCATIONS WITH PUBLIC ACCESS:

Dental Board of California Offices:
2005 Evergreen Street, Suite 1550, Sacramento, CA 95815
333 S. Anita Drive, Suite 930, Orange, CA 92780

Other Locations:
555 Ralph Appezato Parkway, Building A, Rm 209, Alameda, CA 94501
4107 Magnolia Blvd., Burbank, CA 91505
8202 Florence Avenue, Suite 101, Downey, CA 90240
8375 University Avenue, La Mesa, CA 91941

1428 Oak Street, Paso Robles, CA 92446
1304 15th Street, Suite 100, Santa Monica, CA 90404

President Bruce Whitcher, DDS called the meeting to order at 12:10 pm. Secretary Fran Burton called the roll and established a quorum.

AGENDA ITEM 1(A)Discussion and Possible Action Regarding Consideration of Delegation to the Department of Consumer Affairs the Authority to Receive Sponsoring Entity Registration Forms and to Register Sponsoring Entities for Sponsored Free Health Care Events that Utilize the Services of Dentists

Ms. Sarah Wallace reported that at its February 23, 2012 meeting, the Dental Board of California (Board) considered comments received during the 45-day public comment period. The Board voted to modify the text in response to the comments, and directed staff to notice the modified text for 15-day public comment.

Prior to staff noticing the Board's modified text for 15-day public comment, the Department of Consumer Affairs (DCA) contacted all healing arts boards that have proposed regulations relevant to sponsored free health care events, advising that boards may need to further clarify DCA's role in receiving and registering sponsoring entities. The Medical Board of California (MBC), Board of Occupational Therapy (BOT), and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) had all submitted their final rulemaking files to the Office of Administrative Law (OAL). On March 13, 2012, OAL issued a Decision of Disapproval of MBC's proposed regulations due to failure to comply with clarity and necessity standards, as well as procedural issues.

OAL's primary clarity concern related to the specific content of MBC's Form 901-A in relation to the content of similar forms proposed by other healing arts boards within the DCA. The BVNPT and BOT used similar forms incorporated by reference, and each form contained language similar to MBC's form indicating that only one registration form per event should be completed and submitted to the DCA. The Office of Administrative Law was concerned that there was not one common form with a uniform set of regulatory requirements which would, with certainty, allow for the filing of a "single, common form" that meets the regulatory requirements of the three agencies. OAL could not easily understand how the "only one form per event" provision on each of the individual board's forms would work in practice. The differing forms from each board could create the potential for confusion and uncertainty among sponsoring entities legally required to comply with the regulations.

Ms. Wallace stated that she worked with legal counsel to develop modifications to the text and incorporate a new form that has been approved by the DCA.

Staff recommended the Board adopt the Resolution to formally delegate authority to the DCA to receive sponsored entity registration forms and to register sponsoring entities for sponsored free health care events that utilize the services of dentists and to direct staff to add the adopted Resolution to the Board's Sponsored Fee Health Care Events rulemaking file.

M/S/C (Morrow/Afriat) to adopt the Resolution after amending it by moving the 4th "Whereas" to number 2.

Mr. Afriat asked by delegating this authority do they indemnify the state against liabilities or do we inherit liability. Kristy Shellans, legal counsel responded that we are part of the DCA and they are just acting as an arm of the Board in processing these applications of non-profit entities.

Dr. Le asked how communication would be achieved between the DCA and the Board regarding the out-of-state practitioners. Ms. Shellans stated that they would process the forms according to the time frames set forth in the Dental board's regulations and then forward the applications to the Board for inclusion in their database. She stated that the timeframes allow ample time for processing.

Ms. Burton stated that she has a concern about an event that encompasses multiple practitioners. She requested that the Board make a change to the Resolution by moving the 4th "Whereas" up to number two. Legal Counsel agreed.

Dr. Casagrande asked who has enforcement authority if a complaint is filed against one of the health care providers. Ms. Shellans stated that the Board still has to approve the provider. The Board retains the ability to terminate the approval of the provider and notify the entity who licenses the provider if they are from out of state.

Ms. Shellans stated that this item is only dealing with the sponsoring entity itself not the health care providers themselves.

Dr. Casagrande asked if we will deal with any misconduct by healthcare providers at these events the same way we deal with the providers we receive complaints against.

Spencer Walker, Legal Counsel, answered that the Board will have limited jurisdiction and will not be able to take action against the practitioner. It would be a civil issue between the patient and the out-of-state practitioner. The only thing the Board could do would be to rescind the authorization.

There was no public comment.

The motion passed unanimously.

AGENDA ITEM 1(B) Adoption of Proposed Amendments to Cal. Code of Regs., Title 16, Sections 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 Relevant to Licensure Exemption for Out of State Licensed Dentists to Provide Health Care Services at Sponsored Free Health Care Events.

Ms. Wallace stated that now that the Board has chosen to delegate authority to the DCA, staff requests that the Board modify the text in response to staff's recommendations and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the Board at the meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, Sections 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 relevant to licensure exemption for out of state licensed dentists to provide health care services at sponsored free health care events as noticed in the modified text.

M/S/C (McCormick/Olinger) to accept the modified text and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the Board at the meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, Sections 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 relevant to licensure exemption for out of state licensed dentists to provide health care services at sponsored free health care events as noticed in the modified text.

Dr. Morrow asked to clarify a small inconsistency in the use of the word "certificate" in Section 1023.15 (b) and on the Form "Request for Authorization to Practice without a License at a Registered Free Health Care Event" Part 1, second bullet point. Ms. Wallace stated that the word "certificate" should be struck in both of those places.

Dr. Le suggested that in Section 1023.16(a), the word "board" be replaced with "the Department of Consumer Affairs". Ms. Wallace and Ms. Shellans suggested instead adding "or it's delegatee" after the word "board" as the delegation language does not appear until subdivision (b). The motion was modified to strike all references to "certificate" or "registration", in regards to the out-of-state practitioners licensure, throughout the regulatory language add "or its delegatee" after "A sponsoring entity shall register with the board…" in Section 1023.16(a).

There was no public comment.

The motion passed unanimously.

The Board immediately went into Closed Session. Dr. Bettinger recused himself from Closed Session and hung up the phone.

***CLOSED SESSION - FULL BOARD**
The Board met in Closed Session to Deliberate and Take Action on Disciplinary Matters

RETURN TO OPEN SESSION
The Board returned to open session at 2:55 p.m.

Dr. Bettinger called back in to the teleconference.

There was no public comment.

The meeting adjourned at 3:00 p.m.

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Dental Assisting Committee
Meeting Minutes
Thursday, February 23, 2012
Holiday Inn on the Bay, 1355 North Harbor Drive
San Diego, CA 92101
DRAFT

Members Present
Judith Forsythe, RDA, Chair
Bruce Whitcher, DDS, Vice Chair
Fran Burton, Public Member
Luis Dominicis, DDS
Huong Le, DDS
Tom Olinger, DDS

Members Absent

Staff Present
Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Kim Trefry, Enforcement Chief
Teri Lane, Supervising Investigator I
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Associate Analyst
Linda Byers Executive Assistant
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Roll Call and Establishment of Quorum:
Judith Forsythe, RDA, Chair, called the committee meeting to order at 3:01 p.m. Roll was called and a quorum was established.

DA 1 – Approval of the November 7, 2011 Dental Assisting Committee Meeting Minutes
M/S/C (Le/Whitcher) to accept the November 7, 2011 Dental Assisting Committee meeting minutes. The motion passed unanimously.

DA 2 – Update Regarding Status of Dental Assisting Programs and Courses
Ms. Forsythe reported that there are currently 34 pending applications.

DA 3 – Update from Subcommittee Regarding the Survey of Registered Dental Assistants in Extended Functions (RDAEF) Licensees for the Purpose of Analysis of Workforce and Barrier to Care Issues
Denise Johnson, Assistant Executive Officer, reported that since the last meeting, the survey was finalized and sent out to all 1,245 currently licensed RDAEF's. The Board utilized SurveyMonkey a web-based survey developer. To date the board had received 100 responses to the survey. The data was analyzed and Ms. Johnson gave a brief overview of those results. Dr. Olinger stated that the survey indicates that these RDAEF's are not seeking training in further duties. Dr. Whitcher

commented that this is probably due to the high cost of the training. Dr. Guy Atcheson, Academy of General Dentistry, commented that he would like to see question 3 expanded upon to include the size of the practice. He feels that a larger group practice would utilize RDAEF's more than a smaller practice. Mr. DeCuir thanked Ms. Johnson for her efforts on this project. Dr. Earl Johnson, California Association of Orthodontists, commented that he would like to see each of the specialty components within the RDAEF license split out and given separately so that individuals could take only the portions that they would use within their practice instead of the time and expense incurred in having to take all of the courses to become an RDAEF. Dr. Atcheson commented that he agrees with what Dr. Johnson stated that practitioners would be more willing to subsidize the training of their assistants if they were in smaller modules so that they could choose just the specialty procedures they wanted them to take instead of having to take the entire RDAEF program in order to just perform one specialty procedure. He stated that the concept of smaller modules where students could expand their skill set as needed is more appealing to him.

DA 4 – Discussion and Possible Action Regarding the Possibility of Splitting the RDAEF Examination into Two Separate Parts

Ms. Forsythe reviewed what the committee had discussed at the last meeting regarding the timeframe for abandonment of the application. Kristy Shellans, Legal Counsel, recommended that the Board develop a regulation so that applicants know that they cannot take the examination components more than a specified number of years apart. Dr. Dominicis stated that WREB places a 1 year limitation on retaking the failed portion of an exam. Ms. Forsythe stated that the WREB exam is given many times a year so there is ample opportunity for retakes. The RDAEF exam is only given a couple of times a year and 1 year might not be a sufficient timeframe.

M/S/C (Olinger/Whitcher) to recommend to the Board that they split the RDAEF examination into two components with a time limit of 2 years from the date of the prior failure and direct staff to begin the rulemaking process. The motion passed unanimously.

There was no public comment.

The Dental Assisting Committee meeting adjourned at 3:34 p.m.

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MEMORANDUM

DATE	April 24, 2012
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 8:** President's Report

Dr. Bruce Whitcher, Board President, will give a report.

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MEMORANDUM

DATE	April 24, 2012
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 9:** Executive Officer's Report

Richard DeCuir, Executive Officer, will give a report.

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MEMORANDUM

DATE	April 27, 2012
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 10:** Dental Hygiene Committee of California (DHCC) Activities Update

Representatives from the Dental Hygiene Committee of California will provide a report.

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MEMORANDUM

DATE	April 24, 2012
TO	Dental Board Members
FROM	Genie Albertsen, Budget Analyst Dental Board of California
SUBJECT	**Agenda Item 11: Budget Report: Dentistry Expenditures & Dental Assisting Program Expenditures**

For Fiscal Year (FY) 2011-12, the Boards budgets are broken into two separate appropriation accounts: Dentistry $11,227,000 and Dental Assisting $1,673,000 for a total appropriation of $12,900,000.

According to the March 2012 CALSTARS report, as of March 31, 2012, the Dental Board has spent approximately 66% of its FY 2011-12 Dentistry budget appropriations (roughly $7.4 million). Approximately 67% of the expenditures is Personnel Services (roughly $3.7 million), and approximately 66% of the expenditures is Operating Expense & Equipment (roughly $3.9 million) for the FY 2011-12 Dentistry budget. Based on these expenditures, the Board is projected to revert approximately $663,000, or 5.6% at the end of this fiscal year (June 30, 2012).

For Dental Assisting, the Board has spent approximately 71% of its FY 2011-12 Dental Assisting appropriations (roughly $1.2 million). Approximately 61% of the expenditures is Personnel Services (roughly $335,000), and approximately 75% of the expenditures is Operating Expense & Equipment (roughly $850,000). For Dental Assisting based on these expenditures, the Board is projected to revert approximately $74,000 or 4.4%.

So, for the current fiscal year the Board expects a total reversion of $737,000 or approximately 5%.

DENTAL BOARD - 0741
BUDGET REPORT
FY 2011-12 EXPENDITURE PROJECTION

March 31, 2012

OBJECT DESCRIPTION	FY 2010-11 ACTUAL EXPENDITURES (MONTH 13)	FY 2010-11 PRIOR YEAR EXPENDITURES 3/31/2011	FY 2011-12 BUDGET STONE 2011-12	FY 2011-12 CURRENT YEAR EXPENDITURES 3/31/2012	FY 2011-12 PERCENT SPENT	FY 2011-12 PROJECTIONS TO YEAR END	FY 2011-12 UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	2,644,935	1,918,348	**3,449,160**	2,435,523	71%	**3,253,056**	196,104
Statutory Exempt (EO)	96,829	72,124	**101,852**	76,110	75%	**102,012**	(160)
Temp Help (Expert Examiners)		0	**40,000**	0	0%		40,000
Physical Fitness Incentive	4,653	1,625		3,965		**5,287**	(5,287)
Temp Help Reg (907)	289,747	207,974	**222,403**	128,876	58%	**290,000**	(67,597)
Temp Help (Exam Proctors)	269	0	**45,447**	0	0%	**0**	45,447
Board Member Per Diem (901, 920)	19,300	13,100	**45,950**	11,500	25%	**19,000**	26,950
Committee Members (911)	4,500	3,500	**58,686**	3,200	5%	**5,000**	53,686
Overtime	6,544	785	**25,208**	21,114	84%	**31,671**	(6,463)
Staff Benefits	1,266,469	975,721	**1,691,980**	1,061,871	63%	**1,418,310**	273,670
Salary Savings	0	0	**(135,439)**	0	0%	**0**	(135,439)
TOTALS, PERSONNEL SVC	4,333,246	3,193,177	**5,545,247**	**3,742,159**	**67%**	**5,124,336**	420,911
OPERATING EXPENSE AND EQUIPMENT							
General Expense	135,143	79,441	**31,219**	79,249	254%	**138,000**	(106,781)
Fingerprint Reports	9,581	5,613	**25,777**	11,828	46%	**9,500**	16,277
Minor Equipment	43,155	33,639	**18,300**	9,984	55%	**18,300**	0
Printing	67,714	17,867	**43,502**	29,664	68%	**68,000**	(24,498)
Communication	59,163	42,981	**34,670**	22,284	64%	**62,000**	(27,330)
Postage	60,265	42,365	**61,791**	53,844	87%	**80,000**	(18,209)
Insurance	2,016	2,016	**6,972**	2,027	29%	**2,027**	4,945
Travel In State	128,627	75,598	**123,755**	70,013	57%	**129,000**	(5,245)
Training	6,515	4,277	**25,148**	4,060	16%	**9,100**	16,048
Facilities Operations	456,578	457,511	**360,656**	380,469	105%	**457,000**	(96,344)
C & P Services - Interdept.	45,988	53,294	**134,917**	167,088	124%	**167,088**	(32,171)
C & P Services - External	217,708	217,783	**282,274**	219,017	78%	**235,000**	47,274
DEPARTMENTAL SERVICES:							
Departmental Pro Rata	376,575	288,161	**414,433**	318,419	77%	**414,433**	0
Admin/Exec	531,097	397,960	**550,366**	405,181	74%	**550,366**	0
Interagency Services		0	**881**	0	0%	**0**	881
DOI-ProRata Internal	16,823	14,094	**22,354**	16,766	75%	**22,354**	0
Public Affairs Office	35,881	28,752	**37,949**	28,460	75%	**37,949**	0
CCED	23,374	17,521	**40,544**	30,409	75%	**40,544**	0
INTERAGENCY SERVICES:							
Consolidated Data Center	42,420	27,000	**18,907**	17,966	95%	**29,000**	(10,093)
DP Maintenance & Supply	18,843	300	**12,366**	16,299	132%	**20,000**	(7,634)
Central Admin Svc-ProRata	373,091	279,818	**413,261**	309,946	75%	**413,261**	0
EXAMS EXPENSES:							
Exam Supplies	0	0	**43,589**	0	0%	**0**	43,589
Exam Freight	0	0	**166**	0	0%	**0**	166
Exam Site Rental	1,020	1,020	**467,586**	0	0%	**1,000**	466,586
C/P Svcs-External Expert Administration	125,078	86,616	**6,709**	180,524	2691%	**185,000**	(178,291)
C/P Svcs-External Expert Examiners	0	0	**238,248**	0	0%	**0**	238,248
OTHER ITEMS OF EXPENSE:	14,746	363	**661**	210	32%	**15,000**	(14,339)
Awarded Attorney Fee	675,000						
ENFORCEMENT:							
Attorney General	1,401,277	954,561	**1,778,310**	1,062,368	60%	**1,559,536**	218,774
Office Admin. Hearings	190,395	104,610	**406,720**	164,604	40%	**200,000**	206,720
Court Reporters	21,684	9,353		13,009		**22,000**	(22,000)
Evidence/Witness Fees	592,115	313,151	**243,959**	287,871	118%	**592,000**	(348,041)
Vehicle Operations	53,936	32,456	**9,055**	31,821	351%	**42,000**	(32,945)
Major Equipment	0	0	**110,000**	0	0%	**0**	110,000
TOTALS, OE&E	5,725,808	3,588,121	**5,965,045**	3,933,380	66%	**5,519,458**	445,587
TOTAL EXPENSE	10,059,054	6,781,298	**11,510,292**	7,675,539	133%	**10,643,794**	866,498
Sched. Reimb. - Fingerprints	(8,670)	(6,069)	**(53,000)**	(14,601)	28%	**(25,000)**	(28,000)
Sched. Reimb. - Other	(16,095)	(11,530)	**(230,000)**	(8,670)	4%	**(25,000)**	(205,000)
Unsched. Reimb. - External/Private	(36,094)	(27,319)		(30,184)			0
Probation Monitoring Fee - Variable	(47,632)	(27,320)		(64,320)			
Unsched. Reimb. - Other	(218,469)	(157,966)		(166,496)			0
NET APPROPRIATION	9,732,094	6,551,094	**11,227,292**	7,391,269	66%	**10,593,794**	**633,498**
						SURPLUS/(DEFICIT):	**5.6%**

DENTAL ASSISTING PROGRAM - 3142
BUDGET REPORT
FY 2011-12 EXPENDITURE PROJECTION

March 31, 2012

OBJECT DESCRIPTION	FY 2010-11 ACTUAL EXPENDITURES (MONTH 13)	FY 2010-11 PRIOR YEAR EXPENDITURES 3/31/2011	FY 2011-12 BUDGET STONE 2011-12	FY 2011-12 CURRENT YEAR EXPENDITURES 3/31/2012	FY 2011-12 PERCENT SPENT	FY 2011-12 PROJECTIONS TO YEAR END	FY 2011-12 UNENCUMBERED BALANCE
PERSONNEL SERVICES							
Salary & Wages (Staff)	326,795	236,793	**377,193**	207,686	55%	**344,219**	32,974
Statutory Exempt (EO)			**0**			**0**	0
Temp Help (Expert Examiners)							0
Temp Help (Consultants)			**158**		0%		158
Physical Fitness Incentive	889	0		0		**0**	0
Temp Help Reg (907)							0
Temp Help (Exam Proctors)	1,794	1,794		196		**1,800**	(1,800)
Board Member Per Diem (901, 920)	700	400				**700**	(700)
Overtime	9,872	6,441		18,808		**28,800**	(28,800)
Staff Benefits	161,472	122,425	**187,214**	108,620	58%	**180,027**	7,187
Salary Savings	0	0	**(11,340)**	0	0%	**0**	(11,340)
TOTALS, PERSONNEL SVC	501,522	367,853	**553,225**	**335,310**	**61%**	**555,546**	(2,321)
OPERATING EXPENSE AND EQUIPMENT							
General Expense	3,114	2,273	**27,058**	2,836	10%	**5,000**	22,058
Fingerprint Reports	254	254	**7,780**	0	0%	**250**	7,530
Minor Equipment			**0**			**0**	0
Printing	7,058	5,536	**28,518**	14,758	52%	**18,800**	9,718
Communication	66	22	**9,500**	18	0%	**100**	9,400
Postage	18,742	11,363	**35,991**	15,232	42%	**25,000**	10,991
Insurance			**0**			**0**	0
Travel In State	33,944	21,209	**39,802**	30,215	76%	**40,000**	(198)
Training	0	0	**4,119**	0	0%	**0**	4,119
Facilities Operations	44,064	79,718	**63,950**	35,301	55%	**44,000**	19,950
C & P Services - Interdept.	0	0	**316,755**	71,638	23%	**71,638**	245,117
C & P Services - External	8,100	7,500	**532**	15,000	2820%	**22,500**	(21,968)
DEPARTMENTAL SERVICES:							
Departmental Pro Rata	154,459	122,218	**141,203**	107,009	76%	**141,203**	0
Admin/Exec	77,906	58,380	**75,935**	55,987	74%	**75,935**	0
Interagency Services	0	0	**72,554**	0	0%	**0**	72,554
IA w/ OER	34,388	34,388		29,408		**29,408**	(29,408)
DOI-ProRata Internal	2,693	2,260	**3,074**	2,305	75%	**3,074**	0
Public Affairs Office	5,726	4,589	**5,221**	3,914	75%	**5,221**	0
CCED	3,721	2,789	**5,352**	4,014	75%	**5,352**	0
INTERAGENCY SERVICES:							0
Consolidated Data Center	0	0	**1,576**	0	0%	**0**	1,576
DP Maintenance & Supply	0	0	**1,369**	0	0%	**0**	1,369
Central Admin Svc-ProRata	66,754	50,066	**73,015**	54,761	75%	**73,015**	0
EXAMS EXPENSES:							
Exam Supplies	8,074	2,820	**3,946**	4,389	111%	**8,000**	(4,054)
Exam Site Rental - State Owned	17,125	8,326		17,210		**25,000**	(25,000)
Exam Site Rental - Non State Owned	38,894	28,544	**69,939**	46,495	66%	**70,000**	(61)
C/P Svcs-External Expert Administration	1,127	870	**30,877**	9,125	30%	**14,000**	16,877
C/P Svcs-External Expert Examiners	0	0	**47,476**	0	0%	**0**	47,476
C/P Svcs-External Subject Matter	86,192	54,582		141,706		**141,706**	(141,706)
OTHER ITEMS OF EXPENSE:	0	0	**285**	0	0%	**0**	285
ENFORCEMENT:							
Attorney General	175,588	79,922	**67,536**	186,346	276%	**225,000**	(157,464)
Office Admin. Hearings	0	0	**2,740**	0	0%	**0**	2,740
Court Reporters						**0**	0
Evidence/Witness Fees	0	0	**87**	0	0%	**0**	87
Vehicle Operations						**0**	0
Major Equipment	0	0				**0**	0
TOTALS, OE&E	787,989	577,629	**1,136,190**	847,667	75%	**1,044,202**	91,988
TOTAL EXPENSE	1,289,511	945,482	**1,689,415**	1,182,977	135%	**1,599,748**	89,667
Sched. Reimb. - Fingerprints	(51)	0	**(13,000)**	(612)	5%		(13,000)
Sched. Reimb. - Other	(490)	(490)	**(3,000)**	(960)	32%	**(500)**	(2,500)
NET APPROPRIATION	1,288,970	944,992	**1,673,415**	1,181,405	71%	**1,599,248**	**74,167**
						SURPLUS/(DEFICIT):	**4.4%**

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

STATE AND CONSUMER SERVICES AGENCY • GOVERNOR EDMUND G. BROWN JR.
Dental Board of California
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MEMORANDUM

DATE	May 7, 2012
TO	Dental Board Members
FROM	Richard DeCuir, Executive Officer Dental Board of California
SUBJECT	**Agenda Item 12 A:** Discussion and Possible Action Regarding Staff's Recommendation for Appropriate Fee Increases in Dentistry to Sustain Board Expenditures

At the February 23-24 Board Meeting, it finally became necessary to propose licensure fee increases to fund the 12.5 new Consumer Protection Enforcement Initiative (CPEI) positions established in 2010. These positions came at a cost of approximately $1.2 million. Initial licensure fee increases were projected by me to be increased to approximately $405.00 biennially (a $20.00 per year increase). Current biennial licensure fees are $365 and were last increased in 1998.

My initial projections, however, were low in that they did not include the discrepancy between our ongoing budget allotments (pre-CPEI) and our existing revenues. The Boards revenue base has been consistent at just under $9 million per year. Our authorized budget before we received the CPEI augmentation was just over $10 million. However, the Board has historically under spent its appropriation and thus has reverted a portion of its budget. For example, throughout the past 6 years the Board has under-spent it's budget from between $650,000 and $1.872 million with an average reversion of approximately $1.174 million. The under-expenditures reverted back into the Board's reserves to be utilized in future years. These reversions have allowed the Board to generally operate slightly under is budget allotments and within its revenue base.

In addition, the Board still has $4.4 million in outstanding loans to the statewide General Fund that have yet to be paid. These loans will not be fully repaid to the Board until the fee increase regulatory package is in process (per statute).

In order to give you a more definitive picture of our current and future revenues and budget allotments, I requested the Department's Budget Office provide the Fund Condition Reports using fee increases in five scenarios depicting our projected fiscal solvency through FY2015-16. These scenarios range from no increase in fees to a maximum of a 23% increase in license renewal fees. Remember, the last fee increase was in 1998. These five scenarios are shown in Attachment I.

The Bottom Line

These fund conditions show similar results; regardless of the amount of the fee increase (up to the statutory cap of $450.00 or 23%). The Board is projected to begin operating in a deficit spending situation in FY2015-16, even with the General Fund Loan repayment.

Proposed Fee Increases

In order to distribute the various fee increases equally, I have prepared a matrix showing increases of all fees where allowable. (Attachment II)

Additionally, as stated earlier, the current fees the Board utilizes have not been updated since 1998. This means that there are services that the Board provides in accordance with statute, but has never implemented fees in regulation to pay for these services. This includes administration of the Dental Law and Ethics examination, referral services, and extramural facilities. Accordingly, the proposed regulatory package will not only propose fee increases, but will also bring all services provided in line with the collection of necessary fees to pay for referenced services.

For your information and comparison purposes, I have obtained biennial license renewal fees from the various Healing Arts Boards as follows:

Medical Board	$808.00	Optometry Board	$425.00
Veterinary Board	$290.00	Psychology Board	$410.00
Podiatry Board	$900.00	Naturopathic Medicine	$800.00

I will be ready to answer any questions at the Board meeting.

0741 - Dental Board of California
Analysis of Fund Condition

Prepared 4/10/2012

Scenario 1

(Dollars in Thousands)

NOTE: $2.7 Million General Fund Repayment Outstanding

2012-13 Governor's Budget

5% Increase	Actual 2010-11	CY 2011-12	GOVERNOR'S BUDGET BY 2012-13	BY+1 2013-14	BY+2 2014-15	2015-16
BEGINNING BALANCE	$ 7,865	$ 6,087	$ 5,202	$ 4,183	$ 650	$ (3,125)
Prior Year Adjustment	$ 20	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 7,885	$ 6,087	$ 5,202	$ 4,183	$ 650	$ (3,125)
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	$ 28	$ 25	$ 27	$ 28	$ 28	$ 28
125700 Other regulatory licenses and permits	$ 753	$ 783	$ 767	$ 805	$ 805	$ 805
125800 Renewal fees	$ 7,051	$ 6,924	$ 6,964	$ 7,312	$ 7,312	$ 7,312
125900 Delinquent fees	$ 72	$ 74	$ 72	$ 76	$ 76	$ 76
131700 Misc. Revenue from Local Agencies						
141200 Sales of documents	$ -	$ -	$ -		$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -
150300 Income from surplus money investments	$ 37	$ 25	$ -	$ 6	$ -	$ -
150500 Interest Income From Interfund Loans	$ -	$ -	$ -	$ -	$ -	$ -
160400 Sale of fixed assets	$ -	$ 2	$ 2	$ 2	$ 2	$ 2
161000 Escheat of unclaimed checks and warrants	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3
161400 Miscellaneous revenues	$ 11	$ 13	$ 13	$ 13	$ 13	$ 13
164300 Penalty Assessments	$ -	$ -	$ -	$ -	$ -	$ -
Totals, Revenues	$ 7,955	$ 7,849	$ 7,848	$ 8,245	$ 8,239	$ 8,239
Transfers from Other Funds						
F00001 Repayment Per Item 1250-011-0741, Budget Act of 2003		$ 1,700	$ 2,700	$ -	$ -	$ -
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)						
Transfers to Other Funds						
T00001 GF loan per Item 1250-011-0741, BA of 2002	$ -	$ -	$ -	$ -	$ -	$ -
T00001 GF loan per Item 1250-011-0741, BA of 2003	$ -	$ -	$ -	$ -	$ -	$ -
T03039 Transfer to Dentally Underserved Account						
Totals, Revenues and Transfers	$ 7,955	$ 9,549	$ 10,548	$ 8,245	$ 8,239	$ 8,239
Totals, Resources	$ 15,840	$ 15,636	$ 15,750	$ 12,428	$ 8,889	$ 5,114
EXPENDITURES						
Disbursements:						
0840 State Controller (State Operations)	$ 15	$ 12	$ 11			
8880 FISCA	$ 6	$ 35	$ 9			
1110 Program Expenditures (State Operations)	$ 9,732	$ 11,227	$ 11,547	$ 11,778	$ 12,014	$ 12,254
FY 11-12 Reversion		$ -840				
8880 Financial Information System of California (State Operations)						
Total Disbursements	$ 9,753	$ 10,434	$ 11,567	$ 11,778	$ 12,014	$ 12,254
FUND BALANCE						
Reserve for economic uncertainties	$ 6,087	$ 5,202	$ 4,183	$ 650	$ -3,125	$ -7,140
Months in Reserve	7.0	5.4	4.3	0.6	-3.1	-6.9

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. ASSUMES INTEREST RATE AT 1%.

C. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.

0741 - Dental Board of California
Analysis of Fund Condition

Prepared 4/10/2012

Scenario 2

(Dollars in Thousands)

NOTE: $2.7 Million General Fund Repayment Outstanding

2012-13 Governor's Budget

10% Increase	Actual 2010-11	CY 2011-12	GOVERNOR'S BUDGET BY 2012-13	BY+1 2013-14	BY+2 2014-15	2015-16
BEGINNING BALANCE	$ 7,865	$ 6,087	$ 5,202	$ 4,183	$ 1,044	$ (2,341)
Prior Year Adjustment	$ 20	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 7,885	$ 6,087	$ 5,202	$ 4,183	$ 1,044	$ (2,341)
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	$ 28	$ 25	$ 27	$ 28	$ 28	$ 28
125700 Other regulatory licenses and permits	$ 753	$ 783	$ 767	$ 844	$ 844	$ 844
125800 Renewal fees	$ 7,051	$ 6,924	$ 6,964	$ 7,660	$ 7,660	$ 7,660
125900 Delinquent fees	$ 72	$ 74	$ 72	$ 79	$ 79	$ 79
131700 Misc. Revenue from Local Agencies						
141200 Sales of documents	$ -	$ -	$ -		$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -
150300 Income from surplus money investments	$ 37	$ 25	$ -	$ 10	$ -	$ -
150500 Interest Income From Interfund Loans	$ -	$ -	$ -	$ -	$ -	$ -
160400 Sale of fixed assets	$ -	$ 2	$ 2	$ 2	$ 2	$ 2
161000 Escheat of unclaimed checks and warrants	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3
161400 Miscellaneous revenues	$ 11	$ 13	$ 13	$ 13	$ 13	$ 13
164300 Penalty Assessments	$ -	$ -	$ -	$ -	$ -	$ -
Totals, Revenues	$ 7,955	$ 7,849	$ 7,848	$ 8,639	$ 8,629	$ 8,629
Transfers from Other Funds						
F00001 Repayment Per Item 1250-011-0741, Budget Act of 2003		$ 1,700	$ 2,700	$ -	$ -	$ -
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)						
Transfers to Other Funds						
T00001 GF loan per Item 1250-011-0741, BA of 2002	$ -	$ -	$ -	$ -	$ -	$ -
T00001 GF loan per Item 1250-011-0741, BA of 2003	$ -	$ -	$ -	$ -	$ -	$ -
T03039 Transfer to Dentally Underserved Account						
Totals, Revenues and Transfers	$ 7,955	$ 9,549	$ 10,548	$ 8,639	$ 8,629	$ 8,629
Totals, Resources	$ 15,840	$ 15,636	$ 15,750	$ 12,822	$ 9,673	$ 6,288
EXPENDITURES						
Disbursements:						
0840 State Controller (State Operations)	$ 15	$ 12	$ 11			
8880 FISCA	$ 6	$ 35	$ 9			
1110 Program Expenditures (State Operations)	$ 9,732	$ 11,227	$ 11,547	$ 11,778	$ 12,014	$ 12,254
FY 11-12 Reversion		$ -840				
8880 Financial Information System of California (State Operations)						
Total Disbursements	$ 9,753	$ 10,434	$ 11,567	$ 11,778	$ 12,014	$ 12,254
FUND BALANCE						
Reserve for economic uncertainties	$ 6,087	$ 5,202	$ 4,183	$ 1,044	$ -2,341	$ -5,966
Months in Reserve	7.0	5.4	4.3	1.0	-2.3	-5.7

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. ASSUMES INTEREST RATE AT 1%.

C. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.

0741 - Dental Board of California
Analysis of Fund Condition

Prepared 4/10/2012

Scenario 3

(Dollars in Thousands)

NOTE: $2.7 Million General Fund Repayment Outstanding

2012-13 Governor's Budget

15% Increase	Actual 2010-11	CY 2011-12	GOVERNOR'S BUDGET BY 2012-13	BY+1 2013-14	BY+2 2014-15	2015-16
BEGINNING BALANCE	$ 7,865	$ 6,087	$ 5,202	$ 4,183	$ 1,442	$ (1,549)
Prior Year Adjustment	$ 20	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 7,885	$ 6,087	$ 5,202	$ 4,183	$ 1,442	$ (1,549)
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	$ 28	$ 25	$ 27	$ 31	$ 31	$ 31
125700 Other regulatory licenses and permits	$ 753	$ 783	$ 767	$ 882	$ 882	$ 882
125800 Renewal fees	$ 7,051	$ 6,924	$ 6,964	$ 8,009	$ 8,009	$ 8,009
125900 Delinquent fees	$ 72	$ 74	$ 72	$ 83	$ 83	$ 83
131700 Misc. Revenue from Local Agencies						
141200 Sales of documents	$ -	$ -	$ -		$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -
150300 Income from surplus money investments	$ 37	$ 25	$ -	$ 14	$ -	$ -
150500 Interest Income From Interfund Loans	$ -	$ -	$ -	$ -	$ -	$ -
160400 Sale of fixed assets	$ -	$ 2	$ 2	$ 2	$ 2	$ 2
161000 Escheat of unclaimed checks and warrants	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3
161400 Miscellaneous revenues	$ 11	$ 13	$ 13	$ 13	$ 13	$ 13
164300 Penalty Assessments	$ -	$ -	$ -	$ -	$ -	$ -
Totals, Revenues	$ 7,955	$ 7,849	$ 7,848	$ 9,037	$ 9,023	$ 9,023
Transfers from Other Funds						
F00001 Repayment Per Item 1250-011-0741, Budget Act of 2003		$ 1,700	$ 2,700	$ -	$ -	$ -
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)						
Transfers to Other Funds						
T00001 GF loan per Item 1250-011-0741, BA of 2002	$ -	$ -	$ -	$ -	$ -	$ -
T00001 GF loan per Item 1250-011-0741, BA of 2003	$ -	$ -	$ -	$ -	$ -	$ -
T03039 Transfer to Dentally Underserved Account						
Totals, Revenues and Transfers	$ 7,955	$ 9,549	$ 10,548	$ 9,037	$ 9,023	$ 9,023
Totals, Resources	$ 15,840	$ 15,636	$ 15,750	$ 13,220	$ 10,465	$ 7,474
EXPENDITURES						
Disbursements:						
0840 State Controller (State Operations)	$ 15	$ 12	$ 11			
8880 FISCA	$ 6	$ 35	$ 9			
1110 Program Expenditures (State Operations)	$ 9,732	$ 11,227	$ 11,547	$ 11,778	$ 12,014	$ 12,254
FY 11-12 Reversion		$ -840				
8880 Financial Information System of California (State Operations)						
Total Disbursements	$ 9,753	$ 10,434	$ 11,567	$ 11,778	$ 12,014	$ 12,254
FUND BALANCE						
Reserve for economic uncertainties	$ 6,087	$ 5,202	$ 4,183	$ 1,442	$ -1,549	$ -4,780
Months in Reserve	7.0	5.4	4.3	1.4	-1.5	-4.6

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. ASSUMES INTEREST RATE AT 1%.

C. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.

0741 - Dental Board of California
Analysis of Fund Condition

Prepared 4/10/2012

Scenario 4

(Dollars in Thousands)

NOTE: $2.7 Million General Fund Repayment Outstanding

2012-13 Governor's Budget

20% Increase	Actual 2010-11	CY 2011-12	GOVERNOR'S BUDGET BY 2012-13	BY+1 2013-14	BY+2 2014-15	2015-16
BEGINNING BALANCE	$ 7,865	$ 6,087	$ 5,202	$ 4,183	$ 1,836	$ (765)
Prior Year Adjustment	$ 20	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 7,885	$ 6,087	$ 5,202	$ 4,183	$ 1,836	$ (765)
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	$ 28	$ 25	$ 27	$ 32	$ 32	$ 32
125700 Other regulatory licenses and permits	$ 753	$ 783	$ 767	$ 920	$ 920	$ 920
125800 Renewal fees	$ 7,051	$ 6,924	$ 6,964	$ 8,357	$ 8,357	$ 8,357
125900 Delinquent fees	$ 72	$ 74	$ 72	$ 86	$ 86	$ 86
131700 Misc. Revenue from Local Agencies						
141200 Sales of documents	$ -	$ -	$ -		$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -
150300 Income from surplus money investments	$ 37	$ 25	$ -	$ 18	$ -	$ -
150500 Interest Income From Interfund Loans	$ -	$ -	$ -	$ -	$ -	$ -
160400 Sale of fixed assets	$ -	$ 2	$ 2	$ 2	$ 2	$ 2
161000 Escheat of unclaimed checks and warrants	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3
161400 Miscellaneous revenues	$ 11	$ 13	$ 13	$ 13	$ 13	$ 13
164300 Penalty Assessments	$ -	$ -	$ -	$ -	$ -	$ -
Totals, Revenues	$ 7,955	$ 7,849	$ 7,848	$ 9,431	$ 9,413	$ 9,413
Transfers from Other Funds						
F00001 Repayment Per Item 1250-011-0741, Budget Act of 2003		$ 1,700	$ 2,700	$ -	$ -	$ -
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)						
Transfers to Other Funds						
T00001 GF loan per Item 1250-011-0741, BA of 2002	$ -	$ -	$ -	$ -	$ -	$ -
T00001 GF loan per Item 1250-011-0741, BA of 2003	$ -	$ -	$ -	$ -	$ -	$ -
T03039 Transfer to Dentally Underserved Account						
Totals, Revenues and Transfers	$ 7,955	$ 9,549	$ 10,548	$ 9,431	$ 9,413	$ 9,413
Totals, Resources	$ 15,840	$ 15,636	$ 15,750	$ 13,614	$ 11,249	$ 8,648
EXPENDITURES						
Disbursements:						
0840 State Controller (State Operations)	$ 15	$ 12	$ 11			
8880 FISCA	$ 6	$ 35	$ 9			
1110 Program Expenditures (State Operations)	$ 9,732	$ 11,227	$ 11,547	$ 11,778	$ 12,014	$ 12,254
FY 11-12 Reversion		$ -840				
8880 Financial Information System of California (State Operations)						
Total Disbursements	$ 9,753	$ 10,434	$ 11,567	$ 11,778	$ 12,014	$ 12,254
FUND BALANCE						
Reserve for economic uncertainties	$ 6,087	$ 5,202	$ 4,183	$ 1,836	$ -765	$ -3,606
Months in Reserve	7.0	5.4	4.3	1.8	-0.7	-3.5

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. ASSUMES INTEREST RATE AT 1%.

C. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.

0741 - Dental Board of California
Analysis of Fund Condition

Prepared 4/10/2012

Scenario 5

(Dollars in Thousands)

NOTE: $2.7 Million General Fund Repayment Outstanding

2012-13 Governor's Budget

23% Increase	Actual 2010-11	CY 2011-12	GOVERNOR'S BUDGET BY 2012-13	BY+1 2013-14	BY+2 2014-15	2015-16
BEGINNING BALANCE	$ 7,865	$ 6,087	$ 5,202	$ 4,183	$ 2,075	$ (290)
Prior Year Adjustment	$ 20	$ -	$ -	$ -	$ -	$ -
Adjusted Beginning Balance	$ 7,885	$ 6,087	$ 5,202	$ 4,183	$ 2,075	$ (290)
REVENUES AND TRANSFERS						
Revenues:						
125600 Other regulatory fees	$ 28	$ 25	$ 27	$ 33	$ 33	$ 33
125700 Other regulatory licenses and permits	$ 753	$ 783	$ 767	$ 943	$ 943	$ 943
125800 Renewal fees	$ 7,051	$ 6,924	$ 6,964	$ 8,566	$ 8,566	$ 8,566
125900 Delinquent fees	$ 72	$ 74	$ 72	$ 89	$ 89	$ 89
131700 Misc. Revenue from Local Agencies						
141200 Sales of documents	$ -	$ -	$ -		$ -	$ -
142500 Miscellaneous services to the public	$ -	$ -	$ -	$ -	$ -	$ -
150300 Income from surplus money investments	$ 37	$ 25	$ -	$ 21	$ -	$ -
150500 Interest Income From Interfund Loans	$ -	$ -	$ -	$ -	$ -	$ -
160400 Sale of fixed assets	$ -	$ 2	$ 2	$ 2	$ 2	$ 2
161000 Escheat of unclaimed checks and warrants	$ 3	$ 3	$ 3	$ 3	$ 3	$ 3
161400 Miscellaneous revenues	$ 11	$ 13	$ 13	$ 13	$ 13	$ 13
164300 Penalty Assessments	$ -	$ -	$ -	$ -	$ -	$ -
Totals, Revenues	$ 7,955	$ 7,849	$ 7,848	$ 9,670	$ 9,649	$ 9,649
Transfers from Other Funds						
F00001 Repayment Per Item 1250-011-0741, Budget Act of 2003		$ 1,700	$ 2,700	$ -	$ -	$ -
F00683 Teale Data Center (CS 15.00, Bud Act of 2005)						
Transfers to Other Funds						
T00001 GF loan per Item 1250-011-0741, BA of 2002	$ -	$ -	$ -	$ -	$ -	$ -
T00001 GF loan per Item 1250-011-0741, BA of 2003	$ -	$ -	$ -	$ -	$ -	$ -
T03039 Transfer to Dentally Underserved Account						
Totals, Revenues and Transfers	$ 7,955	$ 9,549	$ 10,548	$ 9,670	$ 9,649	$ 9,649
Totals, Resources	$ 15,840	$ 15,636	$ 15,750	$ 13,853	$ 11,724	$ 9,359
EXPENDITURES						
Disbursements:						
0840 State Controller (State Operations)	$ 15	$ 12	$ 11			
8880 FISCA	$ 6	$ 35	$ 9			
1110 Program Expenditures (State Operations)	$ 9,732	$ 11,227	$ 11,547	$ 11,778	$ 12,014	$ 12,254
FY 11-12 Reversion		$ -840				
8880 Financial Information System of California (State Operations)						
Total Disbursements	$ 9,753	$ 10,434	$ 11,567	$ 11,778	$ 12,014	$ 12,254
FUND BALANCE						
Reserve for economic uncertainties	$ 6,087	$ 5,202	$ 4,183	$ 2,075	$ -290	$ -2,895
Months in Reserve	7.0	5.4	4.3	2.1	-0.3	-2.8

NOTES:

A. ASSUMES WORKLOAD AND REVENUE PROJECTIONS ARE REALIZED

B. ASSUMES INTEREST RATE AT 1%.

C. ASSUMES APPROPRIATION GROWTH OF 2% PER YEAR.

Proposed Language Reference	Fee Type	Statutory Cap	Current Fee	Proposed Fee	Annual Population	Proposed Revenue
(a)	Initial application for those applicants qualifying pursuant to Section 1632(c)(2) licensure by WREB	$500	$100	$125	712	$89,000
(b)	Fee for application for licensure by credential	None	$283	$350	177	$61,950
(c)	Fee for application for licensure by residency	Fees established by the board	$100	$350	194	$67,900
(d)	Initial license *Fee pro-rated based on applicant's birth date	$450	$365	$450	1034	$232,650
(e)	Biennial license renewal fee	$450	$365	$450	17680	$7,956,000
(f)	Biennial license renewal fee for those qualifying pursuant to Section 1716.1 of the Code shall be one half of the renewal fee prescribed by subsection (e)	$225 Not < 50% of renewal fee	$182.50	$225	583	$131,175
(g)	Delinquency Fee - License Renewal - The delinquency fee for license renewal shall be the amount prescribed by section 163.5 of the Code.	50% renewal Not > $150 Not < $25	$150	$150	357	$53,550
(h)	Substitute certificate.	$125	$50	$75	222	$16,650
(i)	Application for an additional office permit.	$200	$100	$125	275	$34,375
(j)	Biennial renewal of additional office permit	$100	$100	$100	1102	$110,200
(k)	Delinquency Fee – Additional Office Permit – The delinquency fee for an additional office permit renewal shall be the amount prescribed by section 163.5 of the Code	$25 - $150	$25	$50	45	$2,250
(l)	Late change of practice registration	$75	$50	$75	0	$0
(m)	Fictitious name permit shall be the amount prescribed by Section 1724.5 of the Code. Valid > 12 months	Not > $365 Not < $5	$365	$450	347	$156,150
	Valid < 12 months		$182.50	$225	208	$46,800
(n)	Fictitious name permit renewal.	Not > $365 Not < $5	$150	$225	2514	$565,650
(o)	Delinquency fee-fictitious name renewal. The delinquency fee for fictitious name permits shall be one-half of the fictitious name permit renewal fee	Not > $365 Not < $5	$75	$112.50	160	$18,000
(p)	Continuing education registered provider application and renewal fee	$250	$250	$250	641	$160,250

Proposed Language Reference	Fee Type	Statutory Cap	Current Fee	Proposed Fee	Annual Population	Proposed Revenue
(q)	Application for general anesthesia or conscious sedation permit	$250	$200	$250	88	$22,000
(r)	General anesthesia or conscious sedation permit renewal	$250	$200	$250	610	$152,500
(s)	General anesthesia or conscious sedation on-site inspection and evaluation fee	$350	$250	$310	212	$65,720
(t)	Application for adult or minor oral conscious sedation certificate	Admin. costs	$200	$250	262	$65,500
(u)	Adult or minor oral conscious sedation certificate renewal	Admin. costs	$75	$95	1017	$96,615
(v)	Application for law & ethics examination	Fees estab. by the board	$0	$25	908	$22,700
(w)	License Certification	$2	$0	$20	950	$19,000
(x)	Application for special permit	$300	$300	$300	2	$600
(y)	Renewal of special permit	$100	$100	$100	32	$3,200
(z)	Delinquency Fee – Special Permit – The delinquency fee for a special permit shall be the amount prescribed by section 163.5 of the Code	50% of renewal Not > $150 or < $25	$50	$50	0	$0
(aa)	Application for referral service permit	$25	$0	$25	281	$7,025
(ab)	Renewal of referral service permit	$25	$0	$25	281	$7,025
(ac)	Application for an extramural facility permit	$25	$0	$25	140	$3,500
(ad)	Renewal of an extramural facility permit	$25	$0	$25	140	$3,500

Proposed Fee Total	$10,171,435
(FY) 2010-11 Fund Condition	-$7,955,000
Increase in revenue	$2,216,435

NOTES:

• Portfolio Examination Application Fee: The $350 application fee for the Board's portfolio examination is provided in Business and Professions Code Section 1632(c)(1). Since this fee has been established by statute, it is not necessary to include it in the proposed amendments to California Code of Regulations, Title 16, Section 1021.

• Foreign Dental School Fees: The fees applicable to the application, renewal, and site inspection for foreign dental schools have been specified in California Code of Regulations, Title 16, Section 1024.7. Therefore, it is not necessary to reiterate these fees as part of the proposed amendments to California Code of Regulations, Title 16, Section 1021.

• Mobile Dental Clinics: The fees applicable to the application, renewal, and delinquency renewals for mobile dental clinics have been specified in California Code of Regulations, Title 16, Section 1049, subdivisions (b) and (e). Subdivision (b) provides that licensed dentists who apply to the Board to operate mobile dental clinics shall pay the fee prescribed in California Code of Regulations, Title 16, Section 1021 for application for an additional office permit. Subdivision (e) specifies that permit holders seeking renewal of mobile dental clinics shall pay the fee set for renewal of an additional office permit as prescribed in California Code of Regulations, Title 16, Section 1021.

• Elective Facial Cosmetic Surgery Permit: The $500 application fee and $200 biennial renewal fee for the Board's Elective Facial Cosmetic Surgery Permit are provided in Business and Professions Code Section 1638.1(d). Since these fees have been established by statute, it is not necessary to include them in the proposed amendments to California Code of Regulations, Title 16, Section 1021.

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MEMORANDUM

DATE	May 8, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 12(B):** Discussion and Possible Action Regarding Initiation of a Rulemaking to Amend California Code of Regulations, Title 16, Section 1021 Relevant to Examination, Permit and Licensure Fees for Dentists

Background:
Following the Board's discussion regarding staff's recommendation for appropriate fee increases in dentistry to sustain Board expenditures, the Board may take action to initiate a rulemaking to amend California Code of Regulations, Title 16, Section 1021 relevant to examination, permit, and licensure fees for dentists.

Proposed regulatory language is enclosed for the Board's consideration.

Action Requested:
Consider and possibly accept the proposed regulatory language relevant to examination, permit, and licensure fees for dentists, and direct staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and authorize the Executive Officer to make any 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, authorize the Executive Officer to make any 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 1021 as noticed in the proposed text.

TITLE 16. DENTAL BOARD OF CALIFORNIA
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PROPOSED LANGUAGE

Amend Section 1021 of Division 10 of Title 16 of the California Code of Regulations, to read as follows:

§ 1021. Examination, Permit and License Fees for Dentists.

The following fees are set for dentist examination and licensure by the board:

(a) Initial application ~~for the board clinical and written examination pursuant to Section 1632(c)(1) of the code, initial application~~ for those applicants qualifying pursuant to Section 1632(c)(2) ~~and those applicants qualifying pursuant to Section 1634.1~~	~~$100~~125
~~(b) Initial application for restorative technique examination~~	~~$250~~
~~(c) Applications for reexamination~~	~~$75~~
~~(d) Board clinical and written examination or reexamination pursuant to Section 1632(c)(1) of the code~~	~~$450~~
~~(e) Restorative technique examination or reexamination~~	~~$250~~
~~(f)~~(b) Fee for application for licensure by credential	~~$283~~350
(c) Fee for application for licensure by residency	$350
~~(g)~~(d) Initial license	~~$365~~450*
~~(h)~~(e) Biennial license renewal fee	~~$365~~450~~.~~

~~(i)~~(f) Biennial license renewal fee for those qualifying pursuant to Section 1716.1 of the ~~c~~Code shall be one half of the renewal fee prescribed by subsection (~~h~~e).

~~(j)~~(g) Delinquency ~~f~~Fee - ~~l~~License ~~r~~Renewal - The delinquency fee for license renewal shall be the amount prescribed by section 163.5 of the ~~c~~Code.

~~(k)~~(h) Substitute certificate	~~$50~~75
~~(l)~~(i) Application for an additional office permit	~~$100~~125

~~(m)~~(j) Biennial renewal of additional office permit	$100
(k) Delinquency Fee – Additional Office Permit – The delinquency fee for an additional office permit renewal shall be the amount prescribed by section 163.5 of the Code.	
~~(n)~~(l) Late change of practice registration	~~$50~~75
~~(o)~~(m) Fictitious name permit shall be the amount ~~The fee~~ prescribed by Section 1724.5 of the Code	
~~(p)~~(n) Fictitious name permit renewal	~~$150~~225
~~(q)~~(o) Delinquency ~~f~~Fee_-_~~f~~Fictitious ~~n~~Name Permit ~~r~~Renewal - The delinquency fee for fictitious name permits shall be one-half of the fictitious name permit renewal fee.	
~~(r)~~(p) Continuing education registered provider application and renewal fee	$250
~~(s)~~(q) Application for ~~G~~general anesthesia or conscious sedation permit ~~or adult or minor oral conscious sedation certificate~~	~~$200~~250
(r) General anesthesia or conscious sedation permit renewal	$250
(s) General anesthesia or conscious sedation on-site inspection and evaluation	$310
(t) Application for adult or minor oral conscious sedation certificate	$250
(u) Adult or minor o~~O~~ral c~~C~~onscious s~~S~~edation c~~C~~ertificate r~~R~~enewal	~~$75~~95
~~(u) General anesthesia or conscious sedation permit renewal fee~~	~~$200~~
~~(v) General anesthesia or conscious sedation on-site inspection and evaluation fee~~	~~$250~~
(v) Application for law and ethics examination	$25
(w) License certification	$20
(x) Application for special permit	$300
(y) Renewal of special permit	$100
(z) Delinquency Fee – Special Permit – The delinquency fee for a special	

permit shall be the amount prescribed by section 163.5 of the Code.

(aa) Application for referral service permit	$25
(ab) Renewal of referral service permit	$25
(ac) Application for an extramural facility permit	$25
(ad) Renewal of an extramural facility permit	$25

*Fee pro-rated based on applicant's birth date.

Note: Authority cited: Sections 1614, 1635.5, 1634.2(c), 1724 and 1724.5, Business and Professions Code. Reference: Sections 1632, 1634.1, 1646.6, 1647.8, 1647.12, 1647.15, 1715, 1716.1, 1718.3, 1724 and 1724.5, Business and Professions Code.

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MEMORANDUM

DATE	May 1, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 13:** Update on Pending Regulatory Packages:

A. Sponsored Free Health Care Events *(Cal. Code of Regs., Title 16, §§ 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19)*:

At its February 25, 2011 meeting, the Dental Board of California (Board) discussed and approved proposed regulatory language relative to sponsored free health care events. The Board directed staff to initiate a rulemaking. The proposed action was published by the Office of Administrative Law (OAL) on October 7, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on October 7, 2011 and ended on November 21, 2011. A regulatory hearing was held on November 22, 2011 in Sacramento, and the Board received comments from the California Association of Oral and Maxillofacial Surgeons, the California Dental Association, and the California Academy of General Dentists.

At its February 23, 2012 meeting, the Board considered comments received during the 45-day public comment period. The Board voted to modify the text in response to the comments received and directed staff to notice the modified text for 15-day public comment. Prior to staff noticing the Board's modified text for 15-day public comment, the Department of Consumer Affairs (Department) contacted all healing arts boards that have proposed regulations relevant to sponsored free health care events, advising that boards may need to further clarify the Department's role in receiving and registering sponsoring entities. The Medical Board of California (MBC), Board of Occupational Therapy (BOT), and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) had all submitted their final rulemaking files to OAL. On March 13, 2012, OAL issued a Decision of Disapproval of MBC's proposed regulations due to failure to comply with clarity and necessity standards, as well as procedural issues.

The Office of Administrative Law's primary clarity concern related to the specific content of MBC's Form 901-A in relation to the content of similar forms proposed by other healing arts boards within the Department. The BVNPT and BOT used similar forms incorporated by reference, and each form contained language similar to MBC's form indicating that only one registration form per event should be completed and submitted

to the Department. The Office of Administrative Law was concerned that there was not one common form with a uniform set of regulatory requirements which would, with certainty, allow for the filing of a "single, common form" that meets the regulatory requirements of the three agencies. The Office of Administrative Law could not easily understand how the "only one form per event" provision on each of the individual board's forms would work in practice. The differing forms from each board could create the potential for confusion and uncertainty among sponsoring entities legally required to comply with the regulations.

At its April 11, 2012 teleconference meeting, the Board adopted a Resolution to formally delegate authority to the Department to receive and process sponsored entity registration forms and to register sponsoring entities for sponsored free health care events that utilize the services of dentists. The Board directed staff to add the adopted Resolution to the Board's Sponsored Fee Health Care Events rulemaking file. Additionally, the Board voted to modify the text accordingly and directed staff to complete the rulemaking process, including preparing the modified text for a 15-day public comment period.

Board staff noticed the modified text for 15-day public comment on April 25, 2012. The 15-day public comment period began on April 26, 2012 and will end on May 10, 2012. The Board will discuss and consider any adverse comments received during the meeting of the full Board on May 18, 2012.

B. Notice to Consumers of Licensure by the Dental Board *(Cal. Code of Regs., Title 16, § 1065)*:

At its November 7, 2011 meeting, the Board directed staff to initiate a rulemaking to implement, interpret, and make specific the provisions of Business and Professions Code Sections 138 and 1611.3 relative to providing conspicuous notification to consumers that dentists are licensed and regulated by the Board, require that the notice include a statement to that effect, and contain the Board's toll-free telephone number and its web site address.

The initial rulemaking file was submitted to OAL on January 10, 2012. The proposed action was published on January 20, 2012 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on January 20, 2012 and ended on March 5, 2012. A regulatory hearing was held on March 5, 2012 in Sacramento. The Board did not receive comments in response to the proposed regulation. Since there were no adverse comments received in response to the proposed text, the Board adopted the final text as noticed in the proposed text at its November 7, 2011 meeting.

Staff submitted the final rulemaking package to the Department on March 12, 2012 to begin the review process. On April 26, 2012, the Department notified Board staff of concerns that the proposed language was not legally consistent with Business and Professions Code Section 1611.3. Board staff worked with the Department and Legal Counsel to develop proposed modified text to be presented during the meeting of the full Board on May 18, 2012.

C. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines *(Cal. Code of Regs., Title 16, §§ 1018 and 1020.5)*:

At its February 25, 2011 meeting, the Board discussed and approved proposed regulatory language relative to the uniform standards relating to substance abusing licensees and Disciplinary Guidelines. The Board directed staff to initiate a rulemaking.

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. The regulatory hearing was held on May 10, 2011. The Board received oral testimony from the California Dental Association and written comments from the Center for Public Interest Law. The Substance Abuse Coordination Committee (SACC) met on April 11, 2011 and revised requirements contained in the *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*.

At its August 11, 2011 meeting, the Board tabled response to comments until further legal clarification was received regarding the Board's discretion regarding ordering conditions of probation relative to the uniform standards.

At its November 7, 2011 meeting, the Board reviewed legal opinions from both Board Legal Counsel and Legislative Counsel regarding the Board's discretion regarding the use of the Uniform Standards. The Board tabled action until further clarity could be obtained regarding the need for the Department and the SACC to initiate a formal rulemaking and left this item at the discretion of the Executive Officer to bring back to the Board at a future meeting.

At its February 23, 2012 meeting, the Board was notified that another legal opinion from the Government Unit of the Attorney General's Office had been received by the Department. The Department's Legal Affairs office was still reviewing the opinion and had not released it to the boards and bureaus. Due to the lack of time to review the new opinion and the fact the Board's rulemaking was due to expire March 24, 2012, Legal Counsel advised the Board to direct staff to either let the current package expire or withdraw it and authorize the Executive Officer and staff to work with Legal Counsel in preparing suggested text for possible changes to the guidelines for the Board's consideration at an upcoming meeting once the analysis of the opinion had been received. The Board voted to let the rulemaking expire and bring it back at a future meeting.

The Board will be reviewing the legal opinions and proposed language during the meeting of the full Board on May 18, 2012.

Action Requested:

No action necessary.

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MEMORANDUM

DATE	May 9, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 14(A):** Discussion and Possible Action Regarding Legal Opinions Received Regarding Uniform Standards for Substance Abusing Healing Arts Licensees *(SB 1441, Ridley-Thomas, Chapter 548, Statutes of 2008)*

Background:

At its February 25, 2011 meeting, the Board directed staff to initiate a rulemaking relative to the uniform standards relating to substance abusing licensees and Disciplinary Guidelines. The initial rulemaking was published on March 25, 2011. The 45-day public comment period began on March 25, 2011 and ended on May 9, 2011, and a regulatory hearing was held on May 10, 2011. The Board received oral testimony from the California Dental Association and written comments from the Center for Public Interest Law. During the public comment period, the Substance Abuse Coordination Committee (SACC) met on April 11, 2011 and revised requirements contained in the *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*

At its August 11, 2011 meeting, the Board discussed the comments received during the 45-day public comment period and the changes that were made by the SACC. Board staff presented recommendations to the Board for response to comments, as well as Legal Counsel's interpretation relating to the Board's discretion in using the Uniform Standards. The Board discussed the issue of the Board's discretionary authority in using the uniform standards as conditions of probation for substance abusing licensees. The Board tabled any action until it received more information regarding the Board's discretion; specifically a written legal opinion from the Legislative Counsel's Office.

On October 27, 2011 a written Legislative Counsel opinion was received by Board staff. At its November 7, 2011 meeting, the Board reviewed the Legislative Counsel's opinion and upon tentative review, Board Legal Counsel found that Legislative Counsel opined that the Uniform Standards for Substance Abusing Licensees are not legally enforceable until adopted via a formal rulemaking process; and that the Substance Abuse Coordination Committee (SACC) is a State agency with the power to adopt regulations. Once properly adopted by the SACC, the Healing Arts Boards of the Department of Consumer Affairs would have no discretion to disregard the standards.

The Board tabled action on the Board's proposed until further clarity could be obtained from the Department of Consumer Affairs regarding the need for the Substance Abuse Coordination Committee to conduct a formal rulemaking and left the issue at the discretion of the Board's Executive Officer to bring the rulemaking back to the Board if necessary.

On April 5, 2012, the Board received a memo from Doreathea Johnson, Department of Consumer Affairs Deputy Director of Legal Affairs, with her interpretation in regards to addressing questions concerning the discretion of the healing arts boards with respect to the implementation of the uniform standards.

The following documents are enclosed for the Board's review and consideration:

1. Board Legal Counsel's interpretation relating to the Board's discretion in using the Uniform Standards, as provided at the August 2011 Dental Board meeting.
2. A memo, dated April 5, 2012, from Doreathea Johnson, Deputy Director of Legal Affairs, addressed to the healing arts boards with respect to the Department of Consumer Affairs opinion regarding uniform standards for substance-abusing licensees (SB 1441).
3. A letter, dated October 27, 2011, from the Legislative Counsel Bureau addressed to the Honorable Curren D. Price, Jr. with respect to the healing arts boards adoption of uniform standards.
4. A memorandum from Kathleen A. Lynch, Deputy Attorney General from the Government Law Section of the Attorney General's Office, addressed to the Department of Consumer Affairs Legal Affairs Division regarding uniform standards related to substance-abusing licensees as provided in Business and Professions Code §§ 315-315.4.

The Board's Executive Officer and Legal Counsel will provide further clarification at the Board meeting on May 18, 2012.

Board Legal Counsel's Interpretation Relating to the Board's Discretion In Using The Uniform Standards As Provided at the August 2011 Dental Board Meeting

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At its August 2011 meeting, as part of the staff's recommended response to comments received during the 45-day public comment period, the Board received the following legal opinion from Board Legal Counsel in relation to the Board's discretion in using the uniform standards for substance-abusing licensees. The following is an excerpt of the information contained in Agenda Item 3(A):

COMMENTS RECEIVED DURING THE 45-DAY PUBLIC COMMENT PERIOD AND STAFF RECOMMENDED RESPONSE TO COMMENTS:

Comments Received from the California Dental Association:
Bill Lewis, California Dental Association (CDA), delivered verbal testimony at the regulatory hearing on May 10, 2011 in response to the proposed regulatory action. Mr. Lewis indicated CDA's overall support of the proposed regulations as drafted. Mr. Lewis thanked the Dental Board of California and staff for finding a balance between implementing the Uniform Standards, as created by the Substance Abuse Coordination Committee, and recognizing the distinction between the appropriate roll of the Board's Diversion Program and disciplinary action. Mr. Lewis stated that it is important that the Board maintain flexibility and discretion while treating individuals self-referred into the Diversion Program and not in a one-size fits all approach.

Staff Recommendation:
Since this was not an adverse comment, there is no Board action required in response to the California Dental Association's comment.

Comments Received from the Center for Public Interest Law:
Julianne D'Angelo Fellmeth, Administrative Director, for the Center for Public Interest Law submitted a letter (copy enclosed) in response to the proposed regulations.

First, Ms. Fellmeth stated that the proposed regulation does not incorporate the correct version of the Uniform Standards developed by the Department of Consumer Affairs' Substance Abuse Coordination Committee (SACC). The letter further explained that the SACC finalized its Uniform Standards in April 2011, and that the new version should be incorporated into the DBC's Disciplinary Guidelines.

Secondly, Ms. Fellmeth commented that the Dental Board of California does not have discretion to order individual conditions. Ms. Fellmeth commented that the Board is required to apply any applicable standard developed by the SACC as finalized in April 2011. She stated that Business and Professions Code Section 315 states: "…the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program…" and that there is

nothing discretionary in this language. Ms. Fellmeth further stated that the language was intended to ensure consistency across all the healing arts boards when dealing with substance-abusing licensees and that no healing arts board is allowed to pick and choose among the SB 1441 standards and decide which to follow and which to ignore.

Staff Recommendation:
Staff recommends rejection of these comments. The Dental Board ("Board") incorporated the original terms of the probationary standards recommended by the Substance Abuse Coordination Committee (SACC) into its originally noticed text, which was filed before the SACC amended its standards in April 2011. The Board intends to modify its proposed text to reflect these new amendments as of April 2011.

However, the Board staff disagrees with the commenter that the Board has no discretion. Rulemaking is a discretionary act that has been specifically delegated to the Board by law, not to the SACC. The SACC has been given no power to enact rules or regulations by Section 315 of the Business and Professions Code and the SACC's proposed standards are not exempt from the APA. As a result, any standards the SACC proposes do not have the force of law (statute or regulation) and do not set standards for the Board's licensees unless adopted by the Board through the rulemaking process. In addition, Section 315 of the Business and Professions Code does not restrict the Board's discretion to determine how and when to use the standards, or divest it of its rulemaking authority. The statute merely states that the boards "shall use" the standards formulated by the SACC in dealing with substance-abusing licensees. The Board has done this by proposing to add the standards as written by the SACC to its guidelines. However, the Board has made it clear that it still has authority to determine how and whether to apply the standards. The analysis in support of these conclusions follows.

The Board has been expressly delegated the authority to make rules by the Legislature.

Section 108 of the Business and Professions Code states, in pertinent part, that:

"**Each of the boards** comprising the department **exists as a separate unit**, and has the functions of **setting standards**, … passing upon applicants, conducting investigations of violations of laws under its jurisdiction, … holding hearings for the revocation of licenses, and the imposing of penalties following those hearings, insofar as these powers are given by statute to each respective board." (Emphasis added.)

In particular, Section 1611 of the Business and Professions Code charges the Board with carrying out the purposes of and enforcing the provisions of the Dental Practice Act. This includes adopting rules necessary to issue and renew a license and administer and enforce the Dental Practice Act (Bus.&Prof.Code, § 1614.). Section 1628.7 of the Business and Professions Code states that the Board has "sole discretion" to determine whether an applicant should be issued a probationary license and the Board "may" determine what term or condition of a probationary license may be imposed. Further, Section 1628.7 requires any rules regarding the terms and conditions of probation, including those for abstention of alcohol, to "be adopted, amended, or repealed in accordance with the provisions of the Administrative Procedure Act." Further, Section 1695.5 of the Business and Professions Code states that the "Board

shall establish criteria for the acceptance, denial or termination of licentiates in a diversion program." As a result, the Board has been specifically delegated the authority to decide what standards to adopt and when those standards will be applied.

Section 315 neither divests the Board of its rulemaking authority nor restricts its rulemaking authority. Later enacted statutes support this conclusion.

The first step "is to scrutinize the actual words of the statute, giving them a plain and commonsense meaning." (*People v. Valladoli* (1996) 13 Cal.4th 590, 597, 54 Cal.Rptr.2d 695, 918 P.2d 999.) "If the statutory language is clear and unambiguous, there is no need for construction." (*Viking Pools, Inc. v. Maloney* (1989) 48 Cal.3d 602, 606, 257 Cal.Rptr. 320, 770 P.2d 732.) "[T]he Legislature is presumed to have meant what it said, and the plain meaning of the statute governs." (*People v. Johnson* (2002) 28 Cal.4th 240, 244, 121 Cal.Rptr.2d 197, 47 P.3d 1064.) It is assumed that when enacting a statute, the legislature is deemed to be aware of statutes already in existence and to have enacted new laws in light of the existing law with an intent to maintain a consistent body of statutes (*People v. Harrison* (1989) 48 Cal.3d 321, 329 citing *People v. Overstreet* (1986) 42 Cal.3d. 891,897; *Burlington Northern and Sante Fe Ry. Co. v. Public Utilities Com'n* (2003) 112 Cal.App.4th 881, 889.)

Looking at the plain language of section 315, the statute merely states that each board "shall use" the standards proposed by the SACC. It says nothing about the SACC's power to either adopt rules that must be adopted by the boards or that the boards have no discretion but to apply these terms in every case, regardless of the facts of the case. On the contrary, the failure of the Board to exercise its discretion in every case could subject the Board to legal challenges for any decision it issues when it has expressly been delegated the authority to exercise its discretion. (See, e.g., *Ventimiglia v. Board of Behavioral Sciences* (2008)168 Cal.App.4th 296, 300-301.)

Further, the Legislature presumptively knew that the Board had been delegated "sole discretion" to determine probationary conditions, but instead only chose to require the Board to "use" the standards proposed by the SACC. Later statutory enactments at Sections 315.2 and 315.4 of the Business and Professions Code further support this conclusion. Section 315.4 of the Business and Professions Code, which was enacted after Section 315, reinforces that the Board has discretion when it states that "a board, as described in Section 315, **may** adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice…when the board orders a licensee to undergo a clinical diagnostic evaluation…" (Emphasis added.) The use of the word "may" is ordinarily permissive (*Hogya v. Superior Court* (1977) 75 Cal.App.3d 122, 133.)

However, when the Legislature intended to restrict the board's discretion, it did so clearly when it enacted Section 315.2 of the Business and Professions Code, which states that all boards: "shall order a licensee of the board to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program." As a result, a plain reading of the statute would indicate that the board must order a licensee to cease practice if the licensee tests positive for a banned substance. The Board's current proposal is consistent with

this legislative mandate, and has been included in the Board's changes on page 33 of the proposed amendments.

In conclusion, the Dental Board has authority to set standards as authorized by the Dental Practice Act and other applicable statutes. The enactment of Section 315 of the Business and Professions Code did not remove the Board's authority to exercise its discretion in adopting rules applicable to the professions it regulates. The statute merely states that the boards shall "use" the standards. The statute does not state that the boards are not permitted to exercise their discretion in determining how and when to use the standards proposed by the SACC. Later enacted statutory provisions support this interpretation. As a result, the Board does indeed have discretion to determine whether a particular condition should be applied to a licensee in a given case.

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MEMORANDUM

DATE	April 5, 2012
TO	ALL HEALING ARTS BOARDS
FROM	Doreathea Johnson DOREATHEA JOHNSON Deputy Director, Legal Affairs Department of Consumer Affairs
SUBJECT	Opinion Regarding Uniform Standards for Substance-Abusing Licensees (SB 1441)

This memo addresses a number of questions that have been raised concerning the discretion of healing arts boards, with respect to the Uniform Standards for Substance-Abusing Healing Arts Licensees ("Uniform Standards") that were formulated by the Substance Abuse Coordination Committee and mandated by Business and Professions Code section 315. Previously, there have been discussions and advice rendered, opining that the boards retain the discretion to modify the Uniform Standards. This opinion, largely influenced by the fact that the rulemaking process necessarily involves the exercise of a board's discretion, has been followed by a number of boards as they completed the regulatory process.

Two opinions, one issued by the Legislative Counsel Bureau ("Legislative Counsel") dated October 27, 2011, and an informal legal opinion, rendered by the Government Law Section of the Office of the Attorney General ("Attorney General"), dated February 29, 2012, have been issued and address the discretion of the boards, in adopting the Uniform Standards. This memo is to advise the healing arts boards of this office's opinion regarding the questions raised, after a review of these two opinions. A copy of each opinion is attached for your convenience.

Questions Presented

1. **Do the healing arts boards retain the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards?**

   Both Legislative Counsel and the Attorney General concluded that the healing arts boards do not have the discretion to modify the content of the specific terms or conditions of probation that make up the Uniform Standards. We concur with that conclusion.

2. **Do the healing arts boards have the discretion to determine which of the Uniform Standards apply in a particular case?**

   Legislative Counsel opined that, unless the Uniform Standards specifically so provide, all of the Uniform Standards must be applied to cases involving substance-abusing licensees, as it was their belief that the Legislative intent was to "provide for the full implementation of the Uniform Standards." The Attorney General agreed with Legislative Counsel. Following our review and analysis of Business and Professions Code Section 315, we concur with both the Office of the Attorney General and the Legislative Counsel.

3. **Is the Substance Abuse Coordination Committee (SACC) the entity with rulemaking authority over the uniform standards to be used by the healing arts boards?**

   The Legislative Counsel concluded that the SACC had the authority to promulgate regulations mandating that the boards implement the Uniform Standards. However, the Office of the Attorney General disagreed and concluded that the SACC was not vested with the authority to adopt regulations implementing the uniform standards. We agree with the Office of the Attorney General. It is our opinion that the authority to promulgate the regulations necessary to implement the Uniform Standards, lies with the individual boards that implement, interpret or make specific, the laws administered by those boards. As the SACC is limited to the creation or formulation of the uniform standards, but is not authorized to implement the laws of the healing arts boards, it does not have authority to adopt regulations to implement those standards. Consequently, we agree with the Attorney General's opinion that the SACC is not the rule-making entity with respect to the Uniform Standards, and therefore has no authority to adopt the Uniform Standards as regulations.

It is our recommendation that healing arts boards move forward as soon as possible to implement the mandate of Business and Professions Code section 315, as it relates to

the Uniform Standards. Some of the standards are appropriate for inclusion in an agency's disciplinary guidelines, which necessarily will involve the regulatory process. Others are administrative in nature and not appropriate for inclusion in the disciplinary guidelines. For example, Uniform Standard No. 16 which sets forth reporting requirements would not be appropriate for inclusion in disciplinary guidelines.

Please work with your assigned legal counsel to determine how best to implement the Uniform Standards. This should include a discussion as to whether : (1) the Uniform Standards should be placed in a regulation separate from the disciplinary guidelines; (2) the implementing regulation should include a definition of (or criteria by which to determine) what constitutes a "substance-abusing licensee."

It is hopeful that the foregoing information addresses your concerns with respect to the implementation of the mandatory uniform standards.

Attachments

cc: Denise Brown, DCA Director
Awet Kidane, DCA Chief Deputy Director
DCA Legal Affairs Attorneys

LEGISLATIVE
COUNSEL
BUREAU

A TRADITION OF INDEPENDENT LEGAL SERVICE
TO THE CALIFORNIA LEGISLATURE

LEGISLATIVE COUNSEL BUREAU

October 27, 2011

Honorable Curren D. Price Jr.
Room 2053, State Capitol

HEALING ARTS BOARDS: ADOPTION OF UNIFORM STANDARDS - #1124437

Dear Senator Price:

You have asked two questions with regard to the adoption of uniform standards by the Substance Abuse Coordination Committee pursuant to Section 315 of the Business and Professions Code. You have asked whether the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.). You have also asked, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, whether the healing arts boards are required to implement them.

By way of background, Section 315 of the Business and Professions Code[1] provides as follows:

> "315. (a) For the purpose of determining uniform standards that will be used by healing arts boards in dealing with substance-abusing licensees, there is established in the Department of Consumer Affairs the Substance Abuse Coordination Committee. The committee shall be comprised of the executive officers of the department's healing arts boards established pursuant to Division 2 (commencing with Section 500), the State Board of Chiropractic Examiners, the Osteopathic Medical Board of California, and a designee of the State Department of Alcohol and Drug Programs. The Director of Consumer Affairs shall chair the committee and may invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee.

[1] All further section references are to the Business and Professions Code, unless otherwise referenced.

"(b) The committee shall be subject to the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Division 3 of Title 2 of the Government Code).

"(c) By January 1, 2010, the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program:

"(1) Specific requirements for a clinical diagnostic evaluation of the licensee, including, but not limited to, required qualifications for the providers evaluating the licensee.

"(2) Specific requirements for the temporary removal of the licensee from practice, in order to enable the licensee to undergo the clinical diagnostic evaluation described in paragraph (1) and any treatment recommended by the evaluator described in paragraph (1) and approved by the board, and specific criteria that the licensee must meet before being permitted to return to practice on a full-time or part-time basis.

"(3) Specific requirements that govern the ability of the licensing board to communicate with the licensee's employer about the licensee's status and condition.

"(4) Standards governing all aspects of required testing, including, but not limited to, frequency of testing, randomness, method of notice to the licensee, number of hours between the provision of notice and the test standards for specimen collectors, procedures used by specimen collectors, the permissible locations of testing, whether the collection process must be observed by the collector, backup testing requirements when the licensee is on vacation or otherwise unavailable for local testing, requirements for the laboratory that analyzes the specimens, and the required maximum timeframe from the test to the receipt of the result of the test.

"(5) Standards governing all aspects of group meeting attendance requirements, including, but not limited to, required qualifications for group meeting facilitators, frequency of required meeting attendance, and methods of documenting and reporting attendance or nonattendance by licensees.

"(6) Standards used in determining whether inpatient, outpatient, or other type of treatment is necessary.

"(7) Worksite monitoring requirements and standards, including, but not limited to, required qualifications of worksite monitors, required methods of monitoring by worksite monitors, and required reporting by worksite monitors.

"(8) Procedures to be followed when a licensee tests positive for a banned substance.

"(9) Procedures to be followed when a licensee is confirmed to have ingested a banned substance.

"(10) Specific consequences for major violations and minor violations. In particular, the committee shall consider the use of a deferred prosecution stipulation similar to the stipulation described in Section 1000 of the Penal Code, in which the licensee admits to self-abuse of drugs or alcohol and surrenders his or her license. That agreement is deferred by the agency unless or until the licensee commits a major violation, in which case it is revived and the license is surrendered.

"(11) Criteria that a licensee must meet in order to petition for return to practice on a full-time basis.

"(12) Criteria that a licensee must meet in order to petition for reinstatement of a full and unrestricted license.

"(13) If a board uses a private-sector vendor that provides diversion services, standards for immediate reporting by the vendor to the board of any and all noncompliance with any term of the diversion contract or probation; standards for the vendor's approval process for providers or contractors that provide diversion services, including, but not limited to, specimen collectors, group meeting facilitators, and worksite monitors; standards requiring the vendor to disapprove and discontinue the use of providers or contractors that fail to provide effective or timely diversion services; and standards for a licensee's termination from the program and referral to enforcement.

"(14) If a board uses a private-sector vendor that provides diversion services, the extent to which licensee participation in that program shall be kept confidential from the public.

"(15) If a board uses a private-sector vendor that provides diversion services, a schedule for external independent audits of the vendor' performance in adhering to the standards adopted by the committee.

"(16) Measurable criteria and standards to determine whether each board' method of dealing with substance-abusing licensees protects patients from harm and is effective in assisting its licensees in recovering from substance abuse in the long term." (Emphasis added.)

Thus, the Legislature has established in the Department of Consumer Affairs (hereafter department) the Substance Abuse Coordination Committee (subd. (a), Sec. 315, hereafter committee). The committee is comprised of the executive officers of each healing arts board within the department,[2] the State Board of Chiropractic Examiners, and the

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[2] The department's healing arts boards are those boards established under Division 2 (commencing with Section 500) to license and regulate practitioners of the healing arts. Those boards include, among others, the Dental Board of California, the Medical Board of California, the Veterinary Medical Board, and the Board of Registered Nursing.

Osteopathic Medical Board of California (hereafter, collectively, healing arts boards), and a designee of the State Department of Alcohol and Drug Programs (Ibid.). The Director of Consumer Affairs chairs the committee and is authorized to invite individuals or stakeholders who have particular expertise in the area of substance abuse to advise the committee (Ibid.).

The committee is required to formulate uniform and specific standards in each of 16 areas provided by the Legislature, but otherwise has discretion to adopt the uniform standards each healing arts board shall use in dealing with substance-abusing licensees (subd. (c), Sec. 315). The committee adopted its initial set of uniform standards in April 2010, and revised those initial standards as recently as April 2011.[3] Although the committee has adopted the uniform standards pursuant to its own procedures, it has yet to adopt those standards pursuant to the rulemaking procedures of the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.; hereafter APA).

You have asked whether the committee is required to adopt the uniform standards pursuant to the rulemaking procedures of the APA.

The APA establishes basic minimum procedural requirements for the adoption, amendment, or repeal of administrative regulations by state agencies (subd. (a), Sec. 11346, Gov. C.). The APA is applicable to the exercise of any quasi-legislative power conferred by any statute (Ibid.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates for Nursing Home Reform v. Bonta* (2003) 106 Cal.App.4th 498, 517; hereafter *California Advocates*). The APA may not be superseded or modified by any subsequent legislation except to the extent that the legislation does so expressly (subd. (a), Sec. 11346, Gov. C.).

The term "regulation" is defined for purposes of the APA to mean "<u>every</u> rule, regulation, order, or <u>standard of general application</u> or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency <u>to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure</u>" (Sec. 11342.600, Gov. C.; emphasis added). The APA provides that a state agency shall not issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation under the APA, unless properly adopted under the procedures set forth in the APA, and the Office of Administrative Law is empowered to determine whether any such guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule is a regulation under the APA (Sec. 11340.5, Gov. C.).

In *Tidewater Marine Western, Inc. v. Bradshaw* (1996) 14 Cal.4th 557, 571 (hereafter *Tidewater*), the California Supreme Court found as follows:

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[3] See http://www.dca.ca.gov/about_dca/sacc/index.shtml (as of September 20, 2011).

> "A regulation subject to the APA thus has two principal identifying characteristics. (See *Union of American Physicians & Dentists v. Kizer* (1990) 223 Cal.App.3d 490, 497 [272 Cal.Rptr. 886] [describing two-part test of the Office of Administrative Law].) First, the agency must intend its rule to apply generally, rather than in a specific case. The rule need not, however, apply universally; a rule applies generally so long as it declares how a certain class of cases will be decided. (*Roth v. Department of Veterans Affairs* (1980) 110 Cal.App.3d 622, 630 [167 Cal.Rptr. 552].) Second, the rule must 'implement, interpret, or make specific the law enforced or administered by [the agency], or ... govern [the agency's] procedure.' (Gov. Code, § 11342, subd. (g).)"

If a policy or procedure falls within the definition of a "regulation" within the meaning of the APA, the adopting agency must comply with the procedures for formalizing the regulation, which include public notice and approval by the Office of Administrative Law (*County of Butte v. Emergency Medical Services Authority* (2010) 187 Cal.App.4th 1175, 1200). The Office of Administrative Law is required to review all regulations adopted pursuant to the APA and to make its determinations according to specified standards that include, among other things, assessing the necessity for the regulation and the regulation's consistency with the agency's statutory obligation to implement a statute (subd. (a), Sec. 11349.1, Gov. C.).

Applying these principles to the question presented, the uniform standards are subject to the rulemaking procedures of the APA if the following criteria are met: (1) Section 315 does not expressly preclude application of the APA, (2) the committee is a state agency under the APA, (3) the uniform standards are regulations subject to the APA, and (4) no exemption applies under the APA.

With respect to the first criterion, Section 315 is silent on the application of the APA. Thus, Section 315 does not expressly preclude application of the APA, and the APA will apply to any regulation adopted under Section 315.

We turn next to the second criterion, and whether the committee is an "agency" for purposes of the APA. The word "agency" is defined, for purposes of the APA, by several separate provisions of law. For purposes of the rulemaking procedures of the APA, "agency" is defined to mean a state agency (Sec. 11342.520, Gov. C.). That reference to state agency is defined elsewhere in the Government Code to include every state office, officer, department, division, bureau, board, and commission (subd. (a), Sec. 11000, Gov. C.). The APA does not apply to an agency in the judicial or legislative branch of the state government (subd. (a), Sec. 11340.9, Gov. C.).

Along those lines, the APA is applicable to the exercise of any quasi-legislative power conferred by any statute (subd. (a), Sec. 11346, Gov. C.). Quasi-legislative powers consist of the authority to make rules and regulations having the force and effect of law (*California Advocates*, supra, at p. 517). Thus, for purposes of our analysis, we think that an "agency" means any state office, officer, department, division, bureau, board, or commission that exercises quasi-legislative powers.

Here, the committee is a state office comprised of executive officers of the healing arts boards and the Director of Consumer Affairs. Although the Legislature has set forth 16 areas in which the committee is required to adopt standards, the committee itself is required to exercise quasi-legislative powers and adopt uniform standards within those areas. Those standards shall have the force and effect of law, since the healing arts boards, as discussed more extensively below, are required to use the standards in dealing with substance-abusing licensees and the standards are required to govern matters such as when a licensee is temporarily removed from practice or subject to drug testing or work monitoring (paras. (2), (4), and (7), subd. (c), Sec. 315). Accordingly, we think the committee is an agency to which the APA applies.

As to the third criterion, two elements must be met for the uniform standards at issue to be a regulation: they must apply generally and they must implement, interpret, or make specific a law enforced or administered by the agency or that governs its procedures (*Tidewater*, supra, at p. 571; Sec. 11342.600, Gov. C.). Section 315 requires the committee to formulate uniform and specific standards in specified areas that each healing arts board within the department shall use when dealing with substance-abusing licensees, whether or not the board chooses to have a formal diversion program. The uniform standards will not be limited in application to particular instances or individuals but, instead, will apply generally to those licensees. Further, under this statutory scheme, the uniform standards will implement Section 315 and will be enforced and administered by, and will govern the procedures of, each healing arts board that is a member of the committee. Thus, the uniform standards are, in our view, a regulation under the APA.

Lastly, we turn to the fourth criterion, and whether the regulation is exempt from the APA. Certain policies and procedures are expressly exempted by statute from the requirement that they be adopted as regulations pursuant to the APA. In that regard, Section 11340.9 of the Government Code provides as follows:

> "11340.9. This chapter does not apply to any of the following:
>
> "(a) An agency in the judicial or legislative branch of the state government.
>
> "(b) A legal ruling of counsel issued by the Franchise Tax Board or State Board of Equalization.
>
> "(c) A form prescribed by a state agency or any instructions relating to the use of the form, but this provision is not a limitation on any requirement that a regulation be adopted pursuant to this chapter when one is needed to implement the law under which the form is issued.
>
> "(d) A regulation that relates only to the internal management of the state agency.
>
> "(e) A regulation that establishes criteria or guidelines to be used by the staff of an agency in performing an audit, investigation, examination, or inspection, settling a commercial dispute, negotiating a commercial

arrangement, or in the defense, prosecution, or settlement of a case, if disclosure of the criteria or guidelines would do any of the following:

"(1) Enable a law violator to avoid detection.

"(2) Facilitate disregard of requirements imposed by law.

"(3) Give clearly improper advantage to a person who is in an adverse position to the state.

"(f) A regulation that embodies the only legally tenable interpretation of a provision of law.

"(g) A regulation that establishes or fixes rates, prices, or tariffs.

"(h) A regulation that relates to the use of public works, including streets and highways, when the effect of the regulation is indicated to the public by means of signs or signals or when the regulation determines uniform standards and specifications for official traffic control devices pursuant to Section 21400 of the Vehicle Code.

"(i) A regulation that is directed to a specifically named person or to a group of persons and does not apply generally throughout the state."

None of the exemptions contained in the APA can be reasonably construed to apply to the committee or the uniform standards to be used by the healing arts boards. In addition, we are aware of no other applicable exemption.

Thus, because all four of the criteria are met, it is our opinion that the Substance Abuse Coordination Committee is required to adopt the uniform standards pursuant to the rulemaking procedures under the Administrative Procedure Act (Ch. 3.5 (commencing with Sec. 11340), Pt. 1, Div. 3, Title 2, Gov. C.).

Having reached this conclusion, we next turn to whether the healing arts boards are required to use the uniform standards if those standards are properly adopted. In addressing that question, we apply certain established rules of statutory construction. To ascertain the meaning of a statute, we begin with the language in which the statute is framed (*Leroy T. v. Workmen's Comp. Appeals Bd.* (1974) 12 Cal.3d 434, 438; *Visalia School Dist. v. Workers' Comp. Appeals Bd.* (1995) 40 Cal.App.4th 1211, 1220). Significance should be given to every word, and construction making some words surplusage is to be avoided (*Lambert Steel Co. v. Heller Financial, Inc.* (1993) 16 Cal.App.4th 1034, 1040). In addition, effect should be given to statutes according to the usual, ordinary import of the language employed in framing them (*DuBois v. Workers' Comp. Appeals Bd.* (1993) 5 Cal.4th 382, 388).

As set forth above, subdivision (c) of Section 315 provides that "the committee shall formulate uniform and specific standards in each of the following areas that each healing arts board <u>shall</u> <u>use</u> in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program" (emphasis added). Section 19 provides that "shall" is mandatory and "may" is permissive. The word "may" is ordinarily construed as permissive, whereas the word "shall" is ordinarily construed as mandatory (*Common Cause v. Board of Supervisors* (1989) 49 Cal.3d 432, 443).

Here, in Section 315, the Legislature uses the term "shall" rather than "may" in providing that each healing arts board "shall use" the specific and uniform standards adopted by the committee when dealing with substance-abusing licensees. The Legislature uses the term "shall use" as compared to "shall consider," "may consider," or "may use." The Legislature's use of the term "shall" indicates that the healing arts boards are required to use the standards adopted by the committee rather than being provided the discretion to do so. Moreover, as employed in this context, the word "use" implies that the healing arts boards must implement and apply those standards rather than merely considering them. Finally, the use of the term "uniform" suggests that the Legislature intended each board to apply the same standards. If the healing arts boards were not required to use the standards as adopted by the committee, the standards employed by these boards would vary rather than being "uniform."

Notwithstanding the plain meaning of Section 315, one could argue that the enactment of Section 315.4 indicates that the Legislature intended that implementation of the uniform standards by the boards be discretionary. Section 315.4, which was added by Senate Bill No. 1172 of the 2009-10 Regular Session (Ch. 517, Stats. 2010; hereafter S.B. 1172), provides that a healing arts board "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." Section 315.4 could be read to imply that a healing arts board is not required to implement those uniform standards because the board was given discretion to adopt the regulations that would allow that board to implement the standards, if necessary.

It is a maxim of statutory construction that a statute is to be construed so as to harmonize its various parts within the legislative purpose of the statute as a whole (*Wells v. Marina City Properties, Inc.* (1981) 29 Cal.3d 781, 788). As discussed above, we believe that the plain meaning of Section 315 requires the healing arts boards to implement the uniform standards adopted by the committee. Thus, whether Section 315.4 indicates, to the contrary, that the Legislature intended the boards to have discretion in that regard depends upon whether there is a rational basis for harmonizing the two statutes.

In harmonizing Sections 315 and 315.4, we note that S.B. 1172 did not make any changes to Section 315, such as changing the term "shall" to "may" in subdivision (c) of Section 315 or deleting any subdivisions of Section 315. S.B. 1172 did not diminish the scope of the authority provided to the committee to adopt the uniform standards. In fact, the analysis of the Senate Committee on Business, Professions and Economic Development for S.B. 1172, dated April 19, 2010 (hereafter committee analysis), describes the purpose of S.B. 1172 and the enactment of Section 315.4, as follows:

> "The Author points out that pursuant to SB 1441 (Ridley-Thomas, Chapter 548, Statutes of 2008), the DCA was required to adopt uniform guidelines on sixteen specific standards that would apply to substance abusing health care licensees, regardless of whether a board has a diversion program. Although most of the adopted guidelines do not need additional statutes for

implementation, there are a couple of changes that must be statutorily adopted to fully implement these standards. This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation." (Committee analysis, at p. 4.)

The committee analysis further provides that the purpose of S.B. 1172 was to grant specific authority to implement those standards and "provide for the full implementation of the Uniform Standards" (committee analysis, at p. 11). The committee analysis at no time implies that the Legislature intended the Section 315 uniform standards to be revised or repealed by S.B. 1172 or that, in enacting Section 315.4, the Legislature intended that the implementation of the uniform standards be subject to the discretion of each healing arts board.

Thus, in our view, Section 315.4 may be reasonably construed in a manner that harmonizes it with Section 315. Specifically, we think that the intent of the Legislature in enacting Section 315.4 was not to make the uniform standards discretionary but to "provide for the full implementation of the Uniform Standards" by providing the authority to adopt regulations where the Legislature believed that further statutory authority was needed. Accordingly, we think implementation by the various healing arts boards of the uniform standards adopted under Section 315 is mandatory.[1]

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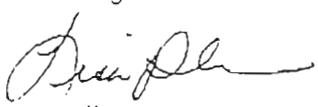
[1] Although Section 108 and Division 2 (commencing with Section 500) authorize the healing arts boards to set standards and adopt regulations (see, for example, Secs. 1224, 1614, 2018, 2531.95, 2615, 2715, 2854, 2930, 3025, 3510, and 3546), it is an axiom of statutory construction that a particular or specific provision takes precedence over a conflicting general provision (Sec. 1859, C.C.P.; *Agricultural Labor Relations Bd. v. Superior Court* (1976) 16 Cal.3d 392, 420, app. dism. *Kube v. Agricultural Relations Bd.* (1976) 429 U.S. 802; see also Sec. 3534, Civ. C.). Thus, in our view, the specific requirement under Section 315 that the uniform standards be adopted supersedes any general provision authorizing the boards to set standards and adopt regulations.

Thus, it is our opinion that, if the uniform standards are properly adopted by the Substance Abuse Coordination Committee, the healing arts boards are required to implement them.

Very truly yours,

Diane F. Boyer-Vine
Legislative Counsel



By
Lisa M. Plummer
Deputy Legislative Counsel

LMP:syl

State of California

Memorandum

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To: Doreathea Johnson
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From: Kathleen A. Lynch
Deputy Attorney General
Government Law Section
Office of the Attorney General – Sacramento

Subject: Uniform Standards Related to Substance-Abusing Licensees (Bus. & Prof. Code, §§ 315 - 315.4)

Executive Summary

Issues

You asked us to review Legislative Counsel's letter of October 27, 2011, which rendered certain opinions regarding the Substance Abuse Coordination Committee (SACC), which was created by Business and Professions Code section 315 to formulate uniform standards for use by the healing arts boards to deal with substance-abusing licensees. Legislative Counsel opined that:

(1) SACC was required to formally promulgate the uniform standards as regulations pursuant to the Administrative Procedures Act (APA), and

(2) the healing arts boards are required to use such standards under Business and Professions Code sections 315.

Summary of Responses

With respect to question (1), we see things differently from Legislative Counsel, in two respects.

First, we believe that SACC's adoption of uniform standards does not need to undergo the formal rule-making process under the APA. While other laws could potentially require the adoption of regulations when the standards are implemented by the boards (such as statutes governing particular boards or the APA's provisions applicable to disciplinary proceedings), we disagree that section 315 itself triggers the need to issue the uniform standards as regulations.

Second, even assuming the uniform standards must be adopted as regulations, we disagree with Legislative Counsel's apparent assumption that SACC would issue the regulations under section 315. The legislative histories of the relevant laws and statutory authorities of the

individual boards indicate that the boards would issue the regulations to implement the uniform standards.

As to question (2), we agree with Legislative Counsel that the healing arts boards must use the uniform standards under sections 315. A board cannot simply disregard a specific standard because it does not like the standard or because it believes that the standard is too cumbersome. However, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. Thus, boards still retain authority to determine if they will undertake certain types of actions if permitted under a specific uniform standard.

Statutory Background

In 2008, SACC was legislatively established within the Department of Consumer Affairs to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a); Stats. 2008, ch. 548 (SB 1441).) By January 1, 2010, SACC was required to "formulate uniform and specific standards" in 16 identified areas "that each healing arts board shall use in dealing with substance-abusing licensees, whether or not a board chooses to have a formal diversion program." (*Id.* at § 315, subd. (c).) These 16 standards include requirements for: clinical diagnostic evaluation of licensees; the temporary removal of the licensee from practice for clinical diagnostic evaluation and any treatment, and criteria before being permitted to return to practice on a full-time or part-time basis; aspects of drug testing; whether inpatient, outpatient, or other type of treatment is necessary; worksite monitoring requirements and standards; consequences for major and minor violations; and criteria for a licensee to return to practice and petition for reinstatement of a full and unrestricted license. (*Ibid.*) SACC meetings to create these standards are subject to Bagley-Keene Act open meeting requirements. (*Id.* at subd. (b).)

On March 3, 2009, SACC conducted its first public hearing, which included a discussion of an overview of the diversion programs, the importance of addressing substance abuse issues for health care professionals, and the impact of allowing health care professionals who are impaired to continue to practice. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) During this meeting, SACC members agreed to draft uniform guidelines for each of the standards, and during subsequent meetings, roundtable discussions were held on the draft uniform standards, including public comments. (*Ibid.*) In December 2009, the Department of Consumer Affairs adopted the uniform guidelines for each of the standards required by SB 1441. (*Ibid.*) These standards have subsequently been amended by SACC, and the current standards were issued in April of 2011.

According to the author of SB 1441 (Ridley-Thomas), the intent of the legislation was to protect the public by ensuring that, at a minimum, a set of best practices or standards were adopted by health-care-related boards to deal with practitioners with alcohol or drug problems. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) The legislation was also meant to ensure uniformity among the

standards established throughout the healing arts licensing boards under the Department of Consumer Affairs. (*Ibid.*) Specifically, the author explains:

> SB 1441 is not attempting to dictate to [the health-related boards] how to run their diversion programs, but instead sets parameters for these boards. The following is true to all of these boards' diversion programs: licensees suffer from alcohol or drug abuse problems, there is a potential threat to allowing licensees with substance abuse problems to continue to practice, actual harm is possible and, sadly, has happened. The failures of the Medical Board of California's (MBC) diversion program prove that there must be consistency when dealing with drug or alcohol issues of licensees.

(Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.)

In the view of its author, "[t]his bill allows the boards to continue a measure of self-governance; the standards for dealing with substance-abusing licensees determined by the commission set a floor, and boards are permitted to establish regulations above these levels." (*Ibid.*)

In 2010, additional legislation was enacted to further implement section 315. Specifically, it provided that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517 (SB 1172).) An order to cease practice does not require a formal hearing and does not constitute a disciplinary action. (*Id.* § 315.4 subds. (b), (c).)

According to the author of SB 1172 (Negrete McLoud), this subsequent statute was necessary "because current law does not give boards the authority to order a cease practice." (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) The author explains:

> Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation. [¶] The ability of a board to order a licensee to cease practice under these circumstances provides a delicate balance to the inherent confidentiality of diversion programs. The protection of the public remains the top priority of boards when dealing with substance abusing licensees.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

Legal Analysis

1a. Section 315 should be construed as not requiring that the uniform standards be adopted as regulations.

Legislative Counsel opined that SACC must adopt the uniform standards as regulations under section 315, because (1) the standards meet the definition of regulations, (2) none of the express exemptions under Government Code section 11340.9 remove them from the APA rule-making process, and (3) section 315 contains no express language precluding application of the rulemaking provisions of the APA. (October 27, 2011 Letter, p. 5.) We have a different view on the threshold issue of whether the standards qualify as a regulation under section 315.

Under the APA, a regulation is defined as "every rule, regulation, order, or standard of general application or the amendment, supplement, or revision of any rule, regulation, order, or standard adopted by any state agency to implement, interpret, or make specific the law enforced or administered by it, or to govern its procedure." (Gov. Code, § 11342.600.) "No state agency shall issue, utilize, enforce, or attempt to enforce any guideline, criterion, bulletin, manual, instruction, order, standard of general application, or other rule, which is a regulation as defined in Section 11342.600, unless [it has been adopted in compliance with the APA]." (*Id.* § 11340.5, subd. (a).) This requirement cannot be superseded or modified by subsequent legislation, unless the statute does so expressly. (*Id.* § 11346, subd. (a).)

An agency standard subject to the APA has two identifying characteristics. First, the agency must intend its rule to apply generally, rather than in a specific case. Second, the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (*Morning Star Co. v. State Bd. of Equalization* (2006) 38

Cal.4th 324, 333, quoting *Tidewater Marine Western, Inc. et al. v. Bradshaw* (1996) 14 Cal.4th 557, 571.)

Whether a particular standard or rule is a regulation requiring APA compliance depends on the facts of each case, considering the rule in question, and the applicable statutory scheme. Generally speaking, courts tend to readily find the need for such compliance. We understand that certain healing arts boards have already adopted regulations incorporating the uniform standards. (See, e.g., Cal. Code Regs., tit. 16, § 4147 [Board of Occupational Therapy].) This approach is understandable in light of the usually broad requirement that agency rules be adopted as regulations and, as noted below, may be required by other laws when they are implemented by the boards. Here, however, the wording and intent of section 315 indicate the Legislature did not intend that the initial act of formulating and adopting the uniform standards is within the purview of the formal APA rule-making process.

"The fundamental rule of statutory construction is that the court should ascertain the intent of the Legislature so as to effectuate the purpose of the law." (*Bodell Const. Co. v. Trustees of California State University* (1998) 62 Cal.App.4th 1508, 1515.) In determining that intent, courts "first examine the words of the statute itself. Under the so-called 'plain meaning' rule, courts seek to give the words employed by the Legislature their usual and ordinary meaning. If the language of the statute is clear and unambiguous, there is no need for construction. However, the 'plain meaning' rule does not prohibit a court from determining whether the literal meaning of a statute comports with its purpose. If the terms of the statute provide no definitive answer, then courts may resort to extrinsic sources, including the ostensible objects to be achieved and the legislative history." (*Ibid.* [citations omitted].) Courts "must select the construction that comports most closely with the apparent intent of the Legislature, with a view to promoting rather than defeating the general purpose of the statute, and avoid an interpretation that would lead to absurd consequences." (*Ibid.* [citation omitted].) "The legislative purpose will not be sacrificed to a literal construction of any part of the statute." (*Ibid.*)

In *Paleski v. State Department of Health Services* (2006) 144 Cal.App.4th 713, the Court of Appeal applied these rules of statutory construction and found that the challenged agency criteria were not required to be adopted as regulations under the APA. (*Id.* at pp. 728-729.) In *Paleski*, plaintiff challenged an agency's criteria for the prescription of certain drugs because the department had not promulgated them in compliance with the APA. (*Ibid.*) The statute, however, expressly authorized the criteria to be effectuated by publishing them in a manual. (*Ibid.*) According to the court, the "necessary effect" of this language was that the Legislature did not intend for the broader notice procedure of the APA to apply when the agency issued the criteria. (*Ibid.*)

Similar reasoning should apply here. Under the plain meaning of section 315, SACC was legislatively established to create uniform standards to be used by the healing arts boards when addressing licensees with substance abuse problems. (Bus. & Prof. Code, § 315, subd. (a).) The intent of the legislation was to protect the public and to ensure that minimum standards are met and to ensure uniformity among the standards established throughout the healing arts

licensing boards under the Department of Consumer affairs. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008.) In formulating these uniform standards, SACC was subject to the Bagley-Keene Act, which requires noticed public meetings. Many roundtable discussions were held on the draft uniform standards, including public vetting and public comments. In that way, the affected community learned about the standards and had the opportunity to comment. This is a prime requirement and purpose of the APA rule-making process (see Gov. Code, § 11343 *et seq.*), but it has already been fulfilled by the procedures set forth in section 315. To now require SACC to repeat that process by promulgating the standards as regulations would make little sense and be duplicative.

Nor does the process for the formulation of the standards set forth in section 315 comport with the other purposes and procedures of the APA. During the APA rule-making process, an agency must provide various reasons, justifications, analyses, and supporting evidence for the proposed regulation. (Gov. Code, § 11346.2.) Those provisions and other provisions of the APA are intended to address the proliferation, content, and effect of regulations proposed by administrative agencies. (*Id.* §§ 11340, 11340.1.) Here, the agency is not proposing to adopt the uniform standards. The Legislature has required that the standards adopted by SACC, be uniform, and be used by the boards. Given this statutory mandate that they be implemented, subjecting the uniform standards to substantive review under the APA again makes little sense.[1]

1b. The SACC would not be the rule-making entity, even if the uniform standards would have to be adopted as regulations.

Even assuming that APA compliance was required under section 315, it is doubtful that SACC would carry the responsibility to adopt regulations. The second component of a regulation requires that the rule must "implement, interpret, or make specific the law enforced or administered by [the agency], or . . . govern [the agency's] procedure." (*Morning Star Co.*, *supra*, 38 Cal.4th at p. 333.) Here, SACC was mandated to create the uniform standards to be used by separate boards; the SACC's creation of the uniform standards does not implement,

[1] Even though the standards do not have to be promulgated as regulations by SACC under section 315, this does not mean that certain regulations would not arguably be required on the part of some or all of the boards under other statutory schemes, such as the laws applicable to a particular board or the APA's provisions on quasi-adjudicatory proceedings. This type of analysis would require a fact specific, case-by-case study of each board's practices and its regulatory scheme and may include consideration of: (1) whether a board's statutory authority requires the adoption of regulations related to actions against substance-abusing licensees, (2) whether current regulations conflict with the standards, and (3) whether in an administrative adjudicative setting, the standards are considered "penalties" and thus must be adopted as regulations under section 11425.50, subdivision (e), of the Government Code.

interpret, or make any law more specific. (Bus. & Prof. Code, § 315, subds. (a), (c).) The only express statutory role of the SACC is to determine the uniform standards in the first place.[2]

The boards are then required to use and apply the standards and have much clearer authority to adopt regulations. "Each of the boards [within the Department of Consumer Affairs] exists as a separate unit, and has the function of setting standards, holding meetings, and setting dates thereof, preparing and conducting examinations, passing upon applicants, conducting investigations of violations of laws under its jurisdiction, issuing citations and hold hearings for the revocation of licenses, and the imposing of penalties following such hearings, in so far as these powers are given by statute to each respective board." (Bus. & Prof. Code, § 108.)

The legislative history for section 315 also supports this conclusion. According to its author, section 315 was adopted to protect the public by ensuring that, at a minimum, a set of best practices or standards *were adopted by health care related boards to deal with practitioners with alcohol or drug problems*. (Assem. Com. on Business and Professions, Analysis of SB 1441 (2008-2009 Reg. Sess.), as amended June 16, 2008, emphasis added.)[3] Practically speaking, it would be difficult for the SACC (or the Department of Consumer Affairs) to draft regulations applicable to all boards, given that they are unique and deal with different subject areas, unless such regulations were adopted wholesale, on a one-size-fits-all basis. As explained below, while the healing arts boards must use the standards, they only have to use the ones that apply to their procedures.

Thus, while section 315 does not require regulations to initially adopt the standards, the boards (and not SACC) would more reasonably be tasked with this responsibility.

2. The healing arts boards must use the uniform standards to the extent that they apply.

The original language of section 315 is clear that the standards must be used. (Bus. & Prof. Code, § 315, subd. (a) ["uniform standards that will be used by healing arts boards"], subd. (b) ["uniform standards . . . that each healing arts board shall use in dealing with substance-abusing licenses"].) Legislative Counsel was asked to opine on whether subsequent legislation (Bus. & Prof. Code, § 315.4) somehow made these uniform standards discretionary. We agree with

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[2] The SACC is a committee formed by various executive officers of healing arts boards and other public officials formed within the Department of Consumer Affairs. (Bus. & Prof. Code, § 315, subds. (a).)

[3] As discussed shortly, the legislative history for follow-up legislation similarly explains that its purpose was to provide statutory authority for some healing arts boards to issue regulations to implement certain of the uniform standards. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.)

Legislative Counsel's conclusion that section 315.4 did not make the uniform standards optional. (Oct. 27, 2011, Letter, p. 9.)

Section 315.4 was enacted two years after section 315, and provides that that the healing arts boards, as described in section 315 and with the exception of the Board of Registered Nursing, "may adopt regulations authorizing the board to order a licensee on probation or in a diversion program to cease practice for major violations and when the board orders a licensee to undergo a clinical diagnostic evaluation pursuant to the uniform and specific standards adopted and authorized under Section 315." (Bus. & Prof. Code, § 315.4, subd. (a); Stats. 2010, ch. 517, (SB 1172).) If a board adopts such regulations, there is nothing to indicate that use of uniform standards created under section 315 is optional. Such an interpretation would be contrary to the legislative intent. Section 314.5 was enacted for the limited purpose to give boards the authority to order a licensee to cease practice, as this was not provided for in section 315. (Sen. Com. on Business, Professions, and Economic Development, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended April 12, 2010.) By no means was the intent to transform the mandatory uniform standards of section 315 into optional suggestions. As the author explains:

> Although most of the adopted guidelines do not need additional statutes for implementation, there are a few changes that must be statutorily adopted to fully implement these standards. [¶] This bill seeks to provide the statutory authority to allow boards to order a licensee to cease practice if the licensee tests positive for any substance that is prohibited under the terms of the licensee's probation or diversion program, if a major violation is committed and while undergoing clinical diagnostic evaluation.

(Senate Third Reading, Analysis of SB 1172 (2010-2011 Reg. Sess.), as amended June 22, 2010.)

In addition, some specific uniform standards themselves recognize a board's discretion whether to order a particular action in the first place. (See e.g. Uniform Standard # 1 ["If a healing arts board orders a licensee . . . to undergo a clinical diagnosis evaluation, the following applies: ... "].) The standards must be applied, however, if a board undertakes a particular practice or orders an action covered by the standards. A determination regarding a board's specific application (or not) of certain uniform standards would have to be based on a fact specific, case-by-case review of each board and its regulatory scheme. However, once a board implements a procedure covered by the uniform standards, it cannot disregard the applicable uniform standard because it disagrees with the standard's substance.

Conclusion

For the reasons stated above, in our view, section 315 can be read to preclude the necessity to adopt regulations when the uniform standards are issued initially. And even if regulations were required under section 315, SACC would not be tasked with this responsibility. We also

believe that the healing arts boards must use the uniform standards where an agency undertakes an action covered by the standards.

Please feel free to contact me if you have any questions or would like to discuss the above.

:KAL

cc: Peter K. Southworth, Supervising Deputy Attorney General

STATE OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

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MEMORANDUM

DATE	May 9, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 14(B):** Discussion and Possible Action Regarding Initiation of a Rulemaking to Amend California Code of Regulations, Title 16, Sections 1018 and 1020.5 and to add a New Section Regarding Implementation of Uniform Standards for Substance Abusing Licensees

Background:

At its February 2012 meeting, the Board voted to let its current rulemaking relevant to uniform standards expire on its one-year deadline in March 2012. The Board voted to authorize the Executive Officer and staff to bring new proposed language back for the Board's consideration once further clarification regarding the Board's discretion could be obtained from the Department of Consumer Affairs.

On April 5, 2012, the Board received a memo from Doreathea Johnson, Department of Consumer Affairs Deputy Director of Legal Affairs, with her interpretation in regards to addressing questions concerning the discretion of the healing arts boards with respect to the implementation of the uniform standards.

Board Legal Counsel has developed three options of proposed language for the Board's consideration. Copies of each option are enclosed for the Board's review and consideration.

The Board's Executive Officer and Legal Counsel will provide further clarification at the Board meeting on May 18, 2012.

OPTION NO. 1 (PRESUMPTION) "TRIGGER" FOR WHEN SB 1441 UNIFORM STANDARDS APPLY

TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

PROPOSED LANGUAGE

Amend Section 1018 of Article 4.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read as follows:

ARTICLE 4.5
Disciplinary Guidelines and
Uniform Standards for Substance-Abusing Licensees

§ 1018. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-AbusingLicensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Dental Board of California shall consider the disciplinary guidelines entitled "Dental Board of CaliforniaDisciplinary Guidelines With Model Language", revised 08/30/2010 which are hereby incorporated by reference.Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Dental Board of California, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors;the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1018.01, without deviation, for each individual determined to be a substance-abusing licensee.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code; and Sections 11400.20 ~~and 11400.21~~, Government Code. Reference: Section 11400.20 and 11425.50(e), Government Code~~.~~; and Sections 315, 315.2, and 315.4 of the Business and Professions Code.

Add Section 1018.01 to Article 4.5 of Chapter 1 to Division 10 of Title 16 of the California Code of Regulations to read as follows:

§ 1018.01. Uniform Standards for Substance-Abusing Licensees.

(a) If the conduct found to be a violation involves drugs and/or alcohol, the licensee shall be presumed to be a substance-abusing licensee for purposes of

section 315 of the Code. If the licensee does not rebut that presumption, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders", New May 18, 2012, which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's guidelines referenced in Section 1018 in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code. Reference: Sections 11400.20 and 11425.50(e), Government Code; Sections 315, 315.2, and 315.4 of the Business and Professions Code.

OPTION NO. 2 (CLINICAL DIAGNOSTIC) "TRIGGER" FOR WHEN SB 1441 UNIFORM STANDARDS APPLY

TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

PROPOSED LANGUAGE

Amend Section 1018 of Article 4.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read as follows:

ARTICLE 4.5
Disciplinary Guidelines and
Uniform Standards for Substance-Abusing Licensees

§ 1018. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-AbusingLicensees.

In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Dental Board of California shall consider the disciplinary guidelines entitled "Dental Board of CaliforniaDisciplinary Guidelines With Model Language", revised 08/30/2010 which are hereby incorporated by reference. Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Dental Board of California, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

However, neither the Board nor an administrative law judge may impose any conditions or terms of probation that are less restrictive than the uniform standards related to substance abuse listed in Section 1018.01. If a licensee has not yet been identified as a substance-abusing licensee (for example, through stipulation) in a case involving drugs or alcohol, a clinical diagnostic evaluation shall be ordered and the remaining provisions of the Uniform Standards may, in the discretion of the Board, be made contingent upon a clinical diagnostic evaluator's report that the individual is a substance-abusing licensee. The clinical diagnostic evaluator's report shall be submitted in its entirety to the board.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code; and Section~~s~~ 11400.20 ~~and 11400.21~~, Government Code. Reference: Section 11400.20 and 11425.50(e), Government Code~~.~~; and Sections 315, 315.2, and 315.4 of the Business and Professions Code.

Add Section 1018.01 to Article 4.5 of Division 10 of Title 16 of the California Code of Regulations to read as follows:

§ 1018.01. Uniform Standards for Substance-Abusing Licensees.

(a) If a licensee has been identified as a substance-abusing licensee as provided in Section 1018, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders", New May 18, 2012, which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's guidelines referenced in Section 1018 in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code. Reference: Sections 11400.20 and 11425.50(e), Government Code~~.~~; Sections 315, 315.2, and 315.4 of the Business and Professions Code.

OPTION 3“TRIGGER” FOR
WHEN SB 1441 UNIFORM STANDARDS APPLY

TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

PROPOSED LANGUAGE

Amend Section 1018 of Article 4.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read as follows:

Article 4.5.
Disciplinary Guidelines and
Uniform Standards for Substance-Abusing Licensees

§ 1018. Disciplinary Guidelines and Exceptions for Uniform Standards Related to Substance-AbusingLicensees.

(a) In reaching a decision on a disciplinary action under the Administrative Procedures Act (Government Code Section 11400 et seq.), the Dental Board of California shall consider the disciplinary guidelines entitled "Dental Board of CaliforniaDisciplinary Guidelines With Model Language", revised 08/30/2010 which are hereby incorporated by reference.Deviation from these guidelines and orders, including the standard terms of probation, is appropriate where the Dental Board of California, in its sole discretion, determines that the facts of the particular case warrant such deviation - for example: the presence of mitigating factors; the age of the case; evidentiary problems.

(b) Notwithstanding subsection (a), the Board shall use the uniform standards for substance-abusing licensees as provided in Section 1018.01, without deviation, for each individual determined to be a substance-abusing licensee.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code; and Section~~s~~ 11400.20 ~~and 11400.21~~, Government Code. Reference: Section 11400.20 and 11425.50(e), Government Code~~.~~; and Sections 315, 315.2, and 315.4 of the Business and Professions Code.

Add Section 1018.01 to Article 4.5 of Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read as follows:

§ 1018.05. Uniform Standards for Substance-Abusing Licensees.

(a) If after notice and hearingconducted in accordance with Chapter 5, Part 1, Division 3, Title 2 of the Government Code (commencing with sections 11500 et seq.), the Board finds that the evidence establishes that an individual is a

substance-abusing licensee, then the terms and conditions contained in the document entitled "Uniform Standards Related to Substance-Abusing Licensees with Standard Language for Probationary Orders," New May 18, 2012,which are hereby incorporated by reference, shall be used in any probationary order of the Board affecting that licensee.

(b) Nothing in this Section shall prohibit the Board from imposing additional terms or conditions of probation that are specific to a particular case or that are derived from the Board's guidelines referenced in Section 1018 in any order that the Board determines would provide greater public protection.

Note: Authority cited: Sections 315, 315.2, 315.4, and 1614, Business and Professions Code. Reference: Sections 11400.20 and 11425.50(e), Government Code~~.~~; Sections 315, 315.2, and 315.4 of the Business and Professions Code.

UNIFORM STANDARDS RELATED TO SUBSTANCE- ABUSING LICENSEES WITH STANDARD LANGUAGE FOR PROBATIONARY ORDERS

New May 18, 2012

Issued By:
The Dental Board of California
2005 Evergreen Street, Suite 1550
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STATE OF CALIFORNIA
dca
DEPARTMENT OF CONSUMER AFFAIRS

STANDARD LANGUAGE TO BE INCLUDED IN EVERY PROBATIONARY ORDER FOR SUBSTANCE-ABUSING LICENSEES

Pursuant to Section 315 of the Business and Professions Code, the Dental Board of California is directed to use the standards developed by the Substance Abuse Coordination Committee (SACC) for substance abusing licensees. On April 11, 2011, the SACC developed standards to be used by all healing arts boards. Administrative Law Judges, parties and staff are therefore required to use the language below, which is developed in accordance with those SACC standards.

To that end, the following probationary terms and conditions shall be used in every case where it has been determined that the individual is a substance-abusing licensee as provided in Section 1018.01 of Title 16 of the California Code of Regulations. For purposes of implementation of these conditions of probation, any reference to the Board also means staff working for the Dental Board of California or its designee. These conditions shall be used in lieu of any similar standard or optional term or condition proposed in the Board's Disciplinary Guidelines, incorporated by reference at Title 16, California Code of Regulations Section 1018. However, the Board's Disciplinary Guidelines should still be used in formulating the penalty and in considering additional terms or conditions of probation appropriate for greater public protection (e.g., other standard or optional terms of probation).

ADDITIONAL PROBATIONARY TERMS AND CONDITIONS

(1) NOTIFICATION TO EMPLOYER - Prior to engaging in the practice of dentistry, the Respondent shall provide a true copy of the Decision and Accusation to his or her employer, supervisor, or contractor, or prospective employer or contractor, and at any other facility where Respondent engages in the practice of dentistry before accepting or continuing employment. Respondent shall submit proof of compliance to the Board or its designee within 15 calendar days.

This condition shall apply to any change(s) in place of employment.

The Respondent shall provide to the Board the names, physical addresses, mailing addresses, and telephone numbers of all employers and supervisors, or contractors, and shall inform the Board in writing of the facility or facilities at which the person engages in the practice of dentistry.

Respondent shall give specific, written consent to the Board and its contractor to allow the Board or its designee to communicate with the employer and supervisor, or contractor regarding the licensee's work status, performance, and monitoring.

Source: (Uniform Standard #3 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated April 2011.)

(2) SUPERVISED PRACTICE - Within 60 days of the effective date of this decision, Respondent shall submit to the Board, for its prior approval, the name and qualifications of one or more proposed supervisors and a plan for each such supervisor by which Respondent's practice would be supervised. The Board will advise Respondent within two weeks whether or not the proposed supervisor and plan of supervision are approved. Respondent shall not practice until receiving notification of Board approval of Respondent's choice of a supervisor and plan of supervision. Respondent shall complete any required consent forms and sign an agreement with the supervisor and the Board regarding the Respondent and the supervisor's requirements and reporting responsibilities.

The plan of supervision shall be *(direct and require the physical presence of the supervising dentist in the dental office during the time dental procedures are performed.) (general and not require the physical presence of the supervising dentist during the time dental procedures are performed but does require an occasional random check of the work performed on the patient as well as quarterly monitoring visits at the office or place of practice).* Additionally, the supervisor shall have full and random access to all patient records of Respondent. The supervisor may evaluate all aspects of Respondent's practice regardless of Respondent's areas of deficiencies.

Each proposed supervisor shall be a California licensed dentist who shall submit written reports to the Board on a quarterly basis verifying that supervision has taken place as required and include an evaluation of Respondent's performance. It shall be Respondent's responsibility to assure that the required reports are filed in a timely manner. Each supervisor shall have been licensed in California for at least five (5) years and not have ever been subject to any disciplinary action by the Board. An administrative citation and fine does not constitute discipline and therefore, in and of itself is not a reason to deny an individual as a supervisor.

The supervisor shall be independent, with no prior business or professional relationship with Respondent and the supervisor shall not be in a familial relationship with or be an employee, partner or associate of Respondent. If the supervisor terminates or is otherwise no longer available, Respondent shall not practice until a new supervisor has

been approved by the Board. All costs of the supervision shall be borne by the Respondent.

If Respondent is placed on probation due to substance or alcohol abuse, then the supervisor shall meet the following additional requirements:

The supervisor shall sign an affirmation that he or she has reviewed the terms and conditions of the licensee's disciplinary order and agrees to supervise the licensee as set forth by the Board.

The supervisor shall have face-to-face contact with the licensee in the work environment on a frequent basis as determined by the Board, but at least once per week. The supervisor shall interview other staff in the office regarding the licensee's behavior, if applicable. The supervisor shall review the licensee's work attendance and behavior.

The supervisor shall orally report any suspected substance abuse to the Board and the licensee's employer within one (1) business day of occurrence. If occurrence is not during the Board's normal business hours the oral report must be within one (1) hour of the next business day. The supervisor shall submit a written report to the Board within 48 hours of occurrence.

The supervisor shall complete and submit a written report monthly or as directed by the board. The report shall include: the licensee's name; license number; supervisor's name and signature; supervisor's license number; worksite location(s); dates licensee had face-to-face contact with supervisor; worksite staff interviewed, if applicable; attendance report; any change in behavior and/or personal habits; any indicators that can lead to suspected substance abuse.

Source: (Uniform Standard #7 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated April 2011.)

NOTE: Orthodontic Assistants require at, a minimum, direct supervision to perform licensed functions (Business and Professions Code section 1750.3). Dental Sedation Assistants require, at a minimum, direct supervision to perform licensed functions (Business and Professions Code section 1750.5). Registered Dental Assistants in Extended Functions require, at a minimum, direct supervision to perform certain licensed functions (Business and Professions Code section 1753.5).

(3) DRUG AND ALCOHOL TESTING - Respondent shall submit to and pay for any random and directed biological fluid or hair sample, breath alcohol or any other mode of testing required by the Board. Though the frequency of testing will be determined by the board or its designee, and shall be designed so as to prevent respondent from anticipating testing dates (either randomized testing or unpredictable dates), the frequency of testing shall be at least the following: at least fifty-two (52) test dates during the first year of probation; at least thirty-six (36) test dates during the second, third, fourth, and fifth years of probation; and at least one (1) test per month in each year of probation after the fifth so long as there have been no positive test results during the previous five (5) years. The board or its designee may require less frequent testing if any of the following applies:

- Where respondent has previously participated in a treatment or monitoring program requiring testing, the board or its designee may consider that prior testing record in applying the three-tier testing frequency schedule described above;
- Where the basisfor probation or discipline is a single incident or conviction involving alcohol or drugs, or two incidents or convictions involving alcohol or drugs that were at least seven (7) years apart, that did not occur at work or on the way to or from work, the board or its designee may skip the first-year testing frequency requirement(s);
- Where respondent is not employed in any health care field, frequency of testing may be reduced to a minimum of twelve (12) tests per year. If respondent wishes to thereafter return to employment in a health care field, respondent shall be required to test at least once a week for a period of sixty (60) days before commencing such employment, and shall thereafter be required to test at least once a week for a full year, before [he/she] may be reduced to a testing frequency of at least thirty-six (36) tests per year, and so forth;
- Respondent's testing requirement may be suspended during any period of tolling of the period of probation;
- Where respondent has a demonstrated period of sobriety and/or non-use, the board or its designee may reduce the testing frequency to no less than twenty-four (24) tests per year.

Any detection through testing of alcohol, or of a controlled substance or dangerous drug absent documentation that the detected substance was taken pursuant to a legitimate prescription and a necessary treatment, may cause the board or its designee to increase the frequency of testing, in addition to any other action including but not limited to further disciplinary action.

Respondent shall have the test performed by a Board-approved laboratory certified and accredited by the U.S. Department of Health and Human Services on the same day that he or she is notified that a test is required. This shall ensure that the test results are sent immediately to the Board. Failure to comply within the time specified shall be considered an admission of a positive drug screen and constitutes a violation of probation. If a test results in a determination that the urine admission was too diluted for testing, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation. If an "out of range result" is obtained, the Board may require Respondent to immediately undergo a physical examination and to complete laboratory or diagnostic test to determine if any underlying physical condition has contributed to the diluted result and to cease practice. Any such examination or laboratory and testing costs shall be paid by respondent. An "out of range result" is one in which, based on scientific principles, indicates the Respondent attempted to alter the test results in order to either render the test invalid or obtain a negative result when a positive result should have been the outcome. If it is determined that Respondent altered the test results, the result shall be considered an admission of a positive urine screen and constitutes a violation of probation and Respondent must cease practicing. Respondent shall not resume practice until notified by the board. If Respondent tests positive for a banned substance, Respondent shall be ordered by the Board to cease any practice, and may not practice unless and until notified by the Board. All alternative drug testing sites due to vacation or travel outside of California must be approved by the Board prior to the vacation or travel.

Source: (Uniform Standards #4, #8-10 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated April 2011 and Section 315.2 of the Business and Professions Code.)

(4) ABSTAIN FROM USE OF ALCOHOL, CONTROLLED SUBSTANCES AND DANGEROUS DRUGS - Respondent shall abstain completely from the possession, injection, or consumption of any route, including inhalation, of all psychotropic (mood altering) drugs, including alcohol, and including controlled substances as defined in the California Uniform Controlled Substances Act, dangerous drug as defined by Business and Professions Code Section 4022, and any drugs requiring a prescription. This prohibition does not apply to medications lawfully prescribed by a physician and surgeon, dentist, or nurse practitioner for a bona fide illness or condition. Within fifteen (15) calendar days of receiving any lawful prescription medications, Respondent shall notify the Board in writing of the following: prescriber's name, address, and telephone number; medication name and strength, issuing pharmacy name, address, and telephone number, and specific medical purpose for medication. Respondent shall also provide a current list of prescribed medication with the prescriber's name, address, and

telephone number on each quarterly report submitted. Respondent shall provide the Board with a signed and dated medical release covering the entire probation period.

Respondent shall identify for the Board's approval a single coordinating physician and surgeon who shall be aware of Respondent's history of substance abuse and who will coordinate and monitor any prescriptions for Respondent for dangerous drugs, controlled substances, psychotropic or mood altering drugs. Once a Board-approved physician and surgeon has been identified Respondent shall provide a copy of the accusation and decision to the physician and surgeon. The coordinating physician and surgeon shall report to the Board on a quarterly basis Respondent's compliance with this condition. If any substances considered addictive have been prescribed, the report shall identify a program for the time limited use of such substances.

The Board may require that only a physician and surgeon who is a specialist in addictive medicine be approved as the coordinating physician and surgeon.

If Respondent has a positive drug screen for any substance not legally authorized, Respondent shall be ordered by the Board to cease any practice and may not practice unless and until notified by the Board. If the Board files a petition to revoke probation or an accusation based upon the positive drug screen, Respondent shall be automatically suspended from practice pending the final decision on the petition to revoke probation or accusation. This period of suspension will not apply to the reduction of this probationary period.

Source: (Uniform Standards #4, #8 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated April 2011, and Section 315.2 of the Business and Professions Code..)

(5) FACILITATED GROUP SUPPORT MEETINGS –

Within fifteen (15) days from the effective date of the decision, Respondent shall submit to the Board or its designee for prior approval the name of one or more meeting facilitators. Respondent shall participate in facilitated group support meetings within fifteen (15) days after notification of the Board's approval of the meeting facilitator. When determining the type and frequency of required facilitated group support meeting attendance, the Board shall give consideration to the following:

- The licensee's history;
- The documented length of sobriety/time that has elapsed since substance abuse;
- The recommendation of the clinical evaluator;
- The scope and pattern of use;
- The licensee's treatment history; and ,

- The nature, duration, and severity of substance abuse.

Verified documentation of attendance shall be submitted by Respondent with each quarterly report. Respondent shall continue attendance in such a group for the duration of probation unless notified by the Board that attendance is no longer required.

If a facilitated group support meeting is ordered, the group facilitator shall meet the following qualifications and requirements:

1. The group meeting facilitator shall have a minimum of three (3) years experience in the treatment and rehabilitation of substance abuse, and shall be licensed or certified by the state or other nationally certified organizations.
2. The group meeting facilitator shall not have a financial relationship, personal relationship, or business relationship with the licensee in the last five (5) years.
3. The group facilitator shall provide to the Board a signed document showing the licensee's name, the group name, the date and location of the meeting, the licensee's attendance, and the licensee's level of participation and progress.
4. The group meeting facilitator shall report any unexcused absence to the Board within twenty-four (24) hours.

Source: (Uniform Standard #5 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated April 2011,

(6) CLINICAL DIAGNOSTIC EVALUATION –Upon order of the Board, Respondent shall undergo a clinical diagnostic evaluation. The board or its designee shall select or approve evaluator(s) holding a valid, unrestricted license to practice, with a scope of practice that includes the conduct of clinical diagnostic evaluations and at least three (3) years' experience conducting such evaluations of health professionals with alcohol or substance abuse problems. The evaluator(s) shall not have a financial relationship, personal relationship, or business relationship with respondent within the last five (5) years. The evaluator(s) shall provide an objective/ unbiased, and independent evaluation of respondent. Respondent shall provide the evaluator with a copy of the Board's Decision prior to the clinical diagnostic evaluation being performed.

Any time the Respondent is ordered to undergo a clinical diagnostic evaluation, Respondent shall cease practice for a minimum of 30 days pending the results of a clinical diagnostic evaluation and review by the Board. During such time, the Respondent shall submit to random drug testing at least 2 times per week.

Respondent shall cause the evaluator to submit to the Board a written clinical diagnostic evaluation report within 10 days from the date the evaluation was completed, unless an

extension, not to exceed 30 days, is granted to the evaluator by the Board. The cost of such evaluation shall be paid by the Respondent. The evaluation(s) shall be conducted in accordance with acceptable professional standards for alcohol or substance abuse clinical diagnostic evaluations. The written report(s) shall set forth, at least, the opinions of the evaluator as to: whether respondent has an alcohol or substance abuse problem; whether respondent is a threat to him/herself or others; and recommendations for alcohol or substance abuse treatment, practice restrictions, or other steps related to respondent's rehabilitation and safe practice. If the evaluator determines during the evaluation process that respondent is a threat to him/herself or others, the evaluator shall notify the board within twenty-four (24) hours.

Respondent shall cease practice until the Board determines that he or she is able to safely practice either full-time or part-time and has had at least 30 days of negative drug test results. Respondent shall comply with any restrictions or recommendations made as a result of the clinical diagnostic evaluation.

Source: (Uniform Standards #1, 2 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated April 2011, and Business and Professions Code section 315.4,)

(7) DRUG OR ALCOHOL ABUSE TREATMENT PROGRAM – Upon order of the Board, Respondent shall successfully complete an inpatient, outpatient or any other type of recovery and relapse prevention treatment program as directed by the Board. When determining if Respondent should be required to participate in inpatient, outpatient or any other type of treatment, the Board shall take into consideration the recommendation of the clinical diagnostic evaluation, license type, licensee's history, length of sobriety, scope and pattern of substance abuse, treatment history, medical history, current medical condition, nature, duration and severity of substance abuse and whether the licensee is a threat to himself or herself or others.

Source: (Uniform Standard #6 of "Uniform Standards Regarding Substance-Abusing Healing Arts Licensees," revised dated April 2011.

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MEMORANDUM

DATE	May 1, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 15(A):** Discussion and Possible Action Regarding Comments Received During the 15-Day Public Comment Period for the Board's Proposed Rulemaking to Add California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

Background:

At its February 25, 2011 meeting, the Dental Board of California (Board) discussed and approved proposed regulatory language relative to sponsored free health care events. The Board directed staff to initiate a rulemaking. The proposed action was published by the Office of Administrative Law (OAL) on October 7, 2011 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on October 7, 2011 and ended on November 21, 2011. A regulatory hearing was held on November 22, 2011 in Sacramento, and the Board received comments from the California Association of Oral and Maxillofacial Surgeons, the California Dental Association, and the California Academy of General Dentists.

At its February 23, 2012 meeting, the Board considered comments received during the 45-day public comment period. The Board voted to modify the text in response to the comments received and directed staff to notice the modified text for 15-day public comment. Prior to staff noticing the Board's modified text for 15-day public comment, the Department of Consumer Affairs (Department) contacted all healing arts boards that have proposed regulations relevant to sponsored free health care events, advising that boards may need to further clarify the Department's role in receiving and registering sponsoring entities. The Medical Board of California (MBC), Board of Occupational Therapy (BOT), and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) had all submitted their final rulemaking files to OAL. On March 13, 2012, OAL issued a Decision of Disapproval of MBC's proposed regulations due to failure to comply with clarity and necessity standards, as well as procedural issues.

The Office of Administrative Law's primary clarity concern related to the specific content of MBC's Form 901-A in relation to the content of similar forms proposed by other

healing arts boards within the Department. The BVNPT and BOT used similar forms incorporated by reference, and each form contained language similar to MBC's form indicating that only one registration form per event should be completed and submitted to the Department. The Office of Administrative Law was concerned that there was not one common form with a uniform set of regulatory requirements which would, with certainty, allow for the filing of a "single, common form" that meets the regulatory requirements of the three agencies. The Office of Administrative Law could not easily understand how the "only one form per event" provision on each of the individual board's forms would work in practice. The differing forms from each board could create the potential for confusion and uncertainty among sponsoring entities legally required to comply with the regulations.

At its April 11, 2012 teleconference meeting, the Board adopted a Resolution to formally delegate authority to the Department to receive and process sponsored entity registration forms and to register sponsoring entities for sponsored free health care events that utilize the services of dentists. The Board directed staff to add the adopted Resolution to the Board's Sponsored Fee Health Care Events rulemaking file. Additionally, the Board voted to modify the text accordingly and directed staff to complete the rulemaking process, including preparing the modified text for a 15-day public comment period.

Board staff noticed the modified text for 15-day public comment on April 25, 2012. The 15-day public comment period began on April 26, 2012 and will end on May 10, 2012. As of the date of this memo, the Board has not received comments in response to the modified text. Any adverse comments received by May 10, 2012 will be hand-carried to the meeting for the Board's consideration.

Action Requested:
If adverse comments are received, the Board may take action to accept or reject the comments.

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MEMORANDUM

DATE	May 1, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 15(B):** Discussion and Possible Action Regarding Adoption of Proposed Additions to California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events

Background:
If any adverse comments are received during the 15-day public comment period, the Board may consider the comments, hold discussion, and take action to adopt proposed amendments to California Code of Regulations, Title 16, Sections 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 relevant to licensure exemption for out of state licensed practitioners to provide healthcare services at sponsored free health care events.

Background:
If any adverse comments are received during the required 15-day public comment period, the Board my hold discussion and take one of the following actions:

A. If the Board rejects the comments received, then the Board would:

   Adopt the final text as noticed in the modified text and direct staff to take all steps necessary to complete the rulemaking process, including the filing of the final rulemaking package with the Office of Administrative Law and authorize the Executive Officer to make any 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 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 relevant to licensure exemption for out of state licensed practitioners to provide healthcare services at sponsored free health care events as noticed in the modified text.

B. If the Board accepts any comments received or modifies the text, then the Board would:

Modify the text in response to the comments received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the second modified text for a 15-day public comment period, which includes the amendments accepted by the board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any 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 1023.15, 1023.16, 1023.17, 1023.18, and 1023.19 relevant to licensure exemption for out of state licensed practitioners to provide healthcare services at sponsored free health care events as noticed in the second modified text.

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MEMORANDUM

DATE	May 1, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 16:** Discussion and Possible Action to Consider Initiation of a Rulemaking to Amend California Code of Regulations, Title 16, Section 1004 Regarding Abandonment of Applications

Background:

During the November 2011 meeting, the Board discussed the Dental Assisting Forum's recommendation to split the existing Registered Dental Assistant in Extended Functions (RDAEF) examination into two separate components The Board discussed concerns raised by the Department of Consumer Affairs' Office of Professional Examination Services (OPES) and whether California Code of Regulations, Title 16, Section 1004 adequately addressed the time frame within which the application would be abandoned should the exam not be taken and passed within two years. The Board's Legal Counsel advised that California Code of Regulations, Title 16, Section 1004 did not adequately address the issue of splitting the examination into two components, and recommended the Board develop a regulation so that applicants clearly understand they cannot take the examination components more than a specified number of years apart.

At its February 2012 meeting, the Dental Board of California (Board) voted to allow Registered Dental Assistant in Extended Functions (RDAEF) candidates to retake the RDAEF examination in two separate components (practical and clinical), but to continue the current requirement of retaking the entire examination (both the practical and the clinical) until the Board has a regulation in effect that specifies a 2-year time limit to retake the examination from the date of the prior failure and directed staff to develop regulatory language.

Additionally, Board staff and Legal Counsel have developed proposed regulatory language to clearly specify that any applicant for a license who fails to complete application requirements within a specified amount of time shall be deemed abandoned and will be required to file a new application. The Board is currently experiencing an exorbitant number of incomplete or deficient applications within the Dental Assisting Program and does not have a current regulation in place that clearly provides for the abandonment of incomplete or deficient applications for licensure.

Proposed Regulatory Language:
Board staff has worked with Board Legal Counsel to develop regulatory language and proposes the Board consider the following changes:

Amend Section 1004 of Division 10 of Title 16 of the California Code of Regulations (Abandonment of Applications):

1. Splitting of RDAEF Examination for the Purposes of Reexamination:
   This proposal amends Section 1004 by adding subdivision (a)(4) to specify that an application shall be deemed to have been abandoned when a RDAEF applicant, after failing either the clinical or practical component of the examination, fails to take a reexamination of the failed component within two years after the date the applicant was notified of such failure.

2. Abandonment of Incomplete or Deficient Applications
   This proposal amends Section 1004 by adding subdivision (c) to specify that for any other application deficiencies not listed in subdivision (a), an applicant for a license who fails to complete application requirements within one year after being notified by the Board of deficiencies in his or her application, shall be deemed to have abandoned the application and shall be required to file a new application and meet all of the requirements which are in effect at the time of reapplication. This proposal would apply to any application for a license issued by the Board.

The proposed regulatory language is enclosed for the Board's consideration.

Action Requested:
Consider and possibly accept the proposed regulatory language relevant to the abandonment of applications, and direct staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and authorize the Executive Officer to make any 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, authorize the Executive Officer to make any 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 1004 as noticed in the proposed text.

TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

PROPOSED LANGUAGE

Amend Section 1004 of Division 10 of Title 16 of the California Code of Regulations to read as follows:

§ 1004. Abandonment of Applications.

(a) An application shall be deemed to have been abandoned in any of the following circumstances:

(1) The applicant fails to submit the application, examination, or reexamination fee within 180 days after notification by the board that such fee is due and unpaid.

(2) The applicant fails to take the licensing examination within two years after the date his or her application was received by the board.

(3) Except as provided in paragraph (4) of this subdivision, ~~T~~the applicant, after failing the examination, fails to take a reexamination within two years after the date the applicant was notified of such failure.

(4) The Registered Dental Assistant in Extended Functions (RDAEF) applicant, after failing either the clinical or practical component of the examination, fails to take a reexamination of the failed component within two years after the date the applicant was notified of such failure.

(b) An application submitted subsequent to the abandonment of a former application shall be treated as a new application.

(c) For any other application deficiencies not listed in subdivision (a), an applicant for a license who fails to complete application requirements within ;one year after being notified by the board of deficiencies in his or her application, shall be deemed to have abandoned the application and shall be required to file a new application and meet all of the requirements which are in effect at the time of reapplication.

Note: Authority cited: Section 1614, Business and Professions Code. Reference: Section 1614, Business and Professions Code.

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MEMORANDUM

DATE	May 1, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 17(A):** Discussion and Possible Action to Consider Recommendations from the Department of Consumer Affairs to Modify the Board's Proposed Rulemaking to Add California Code of Regulations, Title 16, Section 1065 Regarding Requirements for Posting Notice to Consumers of Licensure by the Dental Board

Background:

At its November 7, 2011 meeting, the Dental Board of California (Board) directed staff to initiate a rulemaking to implement, interpret, and make specific the provisions of Business and Professions Code Sections 138 and 1611.3 relative to providing conspicuous notification to consumers that dentists are licensed and regulated by the Board, require that the notice include a statement to that effect, and contain the Board's toll-free telephone number and its web site address.

The initial rulemaking file was submitted to the Office of Administrative Law (OAL) on January 10, 2012. The proposed action was published on January 20, 2012 and was noticed on the Board's web site and mailed to interested parties. The 45-day public comment period began on January 20, 2012 and ended on March 5, 2012. A regulatory hearing was held on March 5, 2012 in Sacramento. The Board did not receive comments in response to the proposed regulation. Since there were no adverse comments received in response to the proposed text, the Board adopted the final text as noticed in the proposed text at its November 7, 2011 meeting.

Staff submitted the final rulemaking package to the Department of Consumer Affairs (Department) on March 12, 2012 to begin the review process. On April 26, 2012, the Department notified Board staff of concerns that the proposed language was not legally consistent with Business and Professions Code Section 1611.3.

Business and Professions Code Section 1611.3 states: "The board shall comply with the requirements of Section 138 by January 1, 2013. The board shall require that the notice under that section include a provision that the board is the entity that regulates dentists

and provide the telephone number and Internet address of the board. The board shall require the notice to be posted in a conspicuous location accessible to public view."

Recommended Modifications:

Board staff has worked with Legal Counsel and the Department to develop proposed modified text to address the Department's concerns. Business and Professions Code Section 1611.3 provides that the Board shall require the notice to be posted in a conspicuous location accessible to public view; therefore, subdivisions (b)(2) and (b)(3) should be stricken because providing notice in the patient's record or on a statement on letterhead, discharge instructions, or other document may not be accessible to public view. In order to maintain consistency with Business and Professions Code Section 1611.3, Board staff recommends the following modifications:

1065. Notice to Consumers of Licensure by the Dental Board.

(a) A licensed dentist engaged in the practice of dentistry shall provide notice to each patient of the fact that the dentist is licensed and regulated by the Board. The notice shall include the following statement and information:

NOTICE TO CONSUMERS
Dentists are licensed and regulated
by the Dental Board of California
(877) 729-7789
www.dbc.ca.gov

(b) The notice required by this section shall be provided by ~~one of the following methods:~~

~~(1) P~~prominently posting the notice in a~~n~~ conspicuous ~~area~~location ~~visible~~accessible to ~~patients~~public view on the premises where the dentist provides the licensed services, in which case the notice shall be in at least 48-point type font.

~~(2) Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in that patient's dental records, stating the patient understands the dentist is licensed and regulated by the Board.~~

~~(3) Including the notice in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed for the patient in at least 14-point type.~~

Note: Authority cited: Section 1614, Business and Professions Code. Reference: Sections 138 and 1611.3, Business and Professions Code.

Action Requested:

The Board may take action to accept, reject, or amend staff's recommendation.

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MEMORANDUM

DATE	May 1, 2012
TO	Dental Board of California
FROM	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
SUBJECT	**Agenda Item 17(B):** Discussion and Possible Action to Adopt Proposed Amendments California Code of Regulations, Title 16, Section 1065 Regarding Requirements for Posting Notice to Consumers of Licensure by the Dental Board

Background:
Following the Board's consideration of staff's recommended modifications to the proposed text, the Board may hold discussion and take action to adopt proposed amendments to California Code of Regulations, Title 16, Section 1065 relevant to requirements for posting notice to consumers of licensure by the Dental Board.

Action Requested:
Staff requests the Board take the following action:

Modify the text in response to the Department's concerns and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the Board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any 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 1065 relevant to requirements for posting notice to consumers of licensure by the Dental Board

TITLE 16. DENTAL BOARD OF CALIFORNIA
DEPARTMENT OF CONSUMER AFFAIRS

MODIFIED TEXT

Changes to the originally proposed text are noted by double-underline for additions and double-strikeout for deletions.

Adopt Section 1065 of Division 10 of Title 16 of the California Code of Regulations, to read as follows:

1065. Notice to Consumers of Licensure by the Dental Board.

(a) A licensed dentist engaged in the practice of dentistry shall provide notice to each patient of the fact that the dentist is licensed and regulated by the Board. The notice shall include the following statement and information:

NOTICE TO CONSUMERS
Dentists are licensed and regulated
by the Dental Board of California
(877) 729-7789
www.dbc.ca.gov

(b) The notice required by this section shall be provided by ~~one of the following methods:~~

~~(1) P~~prominently posting the notice in a~~n~~ conspicuous ~~area~~location ~~visible~~accessible to ~~patients~~public view on the premises where the dentist provides the licensed services, in which case the notice shall be in at least 48-point type font.

~~(2) Including the notice in a written statement, signed and dated by the patient or the patient's representative and retained in that patient's dental records, stating the patient understands the dentist is licensed and regulated by the Board.~~

~~(3) Including the notice in a statement on letterhead, discharge instructions, or other document given to a patient or the patient's representative, where the notice is placed for the patient in at least 14-point type.~~

Note: Authority cited: Section 1614, Business and Professions Code. Reference: Sections 138 and 1611.3, Business and Professions Code.

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MEMORANDUM

DATE	April 24, 2012
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Items 18-19, 21-24:** Committee Reports

The Committee Chairs will give reports.

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MEMORANDUM

DATE	April 30, 2012
TO	Dental Board of California
FROM	Linda Byers, Administrative Assistant Dental Board of California
SUBJECT	**Agenda Item 20:** Update on Portfolio Licensure Examination

Dr. Stephen Casagrande will give an update on the Portfolio Licensure Examination for Dentistry *(AB 1524,Stats 2010 ch 446)*