

**THURSDAY**

**May 19, 2010**



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

**Thursday, May 19, 2011**  
Embassy Suites SFO - 150 Anza Blvd.  
Burlingame, CA 94010  
650-342-4600 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](http://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*

## **Thursday, May 19, 2011**

*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 Open Session**

ROLL CALL ..... Establishment of a Quorum

#### **\* CLOSED SESSION - DISCIPLINARY MATTERS AND LITIGATION-FULL BOARD**

(a) Receive Advice from Counsel on Litigation

Michael L. Potts et al. v. Brian Stiger et al. No. 2:03-CV-00348-JAM DAD, US District Court, Eastern District of Columbia

\*The Board will meet in closed session as authorized by Government Code Section 11126(e).

(b) Deliberate and Take Action on Disciplinary Matters

\*The Board will meet in closed session as authorized by Government Code Section 11126(c)(3).

#### **\*CLOSED SESSION – LICENSING, CERTIFICATION, AND PERMITS COMMITTEE**

Issuance of New License(s) to Replace Cancelled License(s)

\*The Committee will meet in closed session as authorized by Government Code Section 11126(c)(2) to deliberate on applications for issuance of new license(s) to replace cancelled license(s)

#### **\*CLOSED SESSION - EXAMINATION APPEALS COMMITTEE**

Grant/Deny Appeals from California Examination Candidates

\*The Committee will meet in closed session as authorized by Government Code Section 11126(c)(1).

**OPEN SESSION RESUMES** (approximately) 10:30 a.m.

**COMMITTEE MEETINGS – SEE ATTACHED AGENDAS**

#### **➤ EXAMINATION COMMITTEE**

See attached Examination Committee agenda

- LICENSING, CERTIFICATION, AND PERMITS COMMITTEE  
See attached Licensing, Certification, and Permits Committee agenda
- DENTAL ASSISTING COMMITTEE  
See attached Dental Assisting Committee agenda
- LEGISLATIVE AND REGULATORY COMMITTEE  
See attached Legislative and Regulatory Committee agenda
- ENFORCEMENT COMMITTEE  
See attached Enforcement Committee agenda

**FULL BOARD MEETING RESUMES**

- AGENDA ITEM 1 ..... Presentation by The Children’s Partnership
- AGENDA ITEM 2 ..... Discussion and Possible Action Regarding the Renewal Application of the Universidad De La Salle
- AGENDA ITEM 3 ..... Discussion and Possible Action to Consider:
  - (A) Comments Received During the 45-Day Public Comment Period Relative to the Proposed Addition of Title 16, CCR, Section 1018.05 and the Proposed Amendment to Title 16, CCR, Section 1020 for the Consumer Protection Enforcement Initiative; and
  - (B) Adoption of the Proposed Addition of Title 16, CCR, Section 1018.05 and the Proposed Amendment to Title 16, CCR, Section 1020 for the Consumer Protection Enforcement Initiative
- AGENDA ITEM 4 ..... Discussion and Possible Action Regarding:
  - (A) Status and 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
  - (B) Adoption of Proposed Amendments to Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines

**PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA**

*Note: The Board may not discuss or take action on any matter raised during the Public Comment section that is not included on this agenda, except whether to decide to place the matter on the agenda of a future meeting. (Government Code Section 11125 and 11125.7(a))*

RECESS

# **AGENDA ITEM 1**

**Children's Partnership**



## MEMORANDUM

<b>DATE</b>	May 5, 2011
<b>TO</b>	Dental Board Members
<b>FROM</b>	Linda Byers, Executive Assistant Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 1: Presentation by the Children's Partnership</b>

### Background

#### **MISSION OF THE CHILDREN'S PARTNERSHIP**

The Children's Partnership works to ensure that all children - especially those at risk of being left behind - have the resources and the opportunities they need to grow up healthy and lead productive lives.

#### **CALIFORNIA CHILDREN'S DENTAL WORKFORCE CAMPAIGN A Project to Increase Access to Dental Care for Children**

According to The Children's Partnership web site, the California Children's Dental Workforce Campaign aims to increase access to high-quality dental care for large numbers of underserved children in the most cost-effective way by expanding the capacity of the dental team. New workforce models can facilitate the delivery of urgently needed dental services, including preventive and primary dental care, in places where children and other underserved populations currently have limited access to dental care.

According to the Project Summary (enclosed) the campaign shall consist of the following activities:

- Identify Gaps in Dental Care for Children
- Develop Guiding Principles for Workforce Solutions
- Develop Proposal for New Workforce Models
- Build the Base of Support
- Mount a Strong Policy Advocacy Campaign

As a result of the California Children's Dental Workforce Campaign, Senator Padilla introduced Senate Bill 694 on February 18, 2011. This proposed legislation would require the Director of the Department of Consumer Affairs, in collaboration with the Board, to convene a working group to conduct an analysis of the dental care needs of California residents. The workgroup would be responsible for analyzing the populations of children who would be newly eligible to receive dental health services under the

federal Patient Protection and Affordable Care Act. The workgroup will be responsible for determining the workforce requirements to meet the needs of these newly insured children, considering the regional needs and capabilities required. The bill authorizes the work group to engage the expertise of stakeholders to assist in the analysis.

The Children's Partnership has prepared a presentation outlining their proposals for the new workforce model.

**CALIFORNIA CHILDREN'S  
DENTAL WORKFORCE CAMPAIGN:**

**A Project to Increase Access to Dental Care for Children**

Project Summary

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**THE NEED**

Today, tooth decay is the single most common chronic childhood disease in the United States,<sup>1</sup> even though it is largely preventable. Untreated dental disease results in pain and suffering, problems with eating and speaking, compromised learning, missed schools days, and unfortunately—in some cases—death.

Low-income children suffer twice as much from dental disease as their higher income peers, and their disease is more likely to be untreated.<sup>2</sup> Children from minority backgrounds also suffer disproportionately from dental disease.<sup>3</sup>

Growing numbers of California's children are unable to access needed dental care because of a lack of dentists willing to treat them. According to the latest available data (2005), 24 percent of California's children ages 0-11 had never been to a dentist.<sup>4</sup> Barriers to accessing needed dental care include provider shortages, a maldistribution of dentists in relation to children who need care, low provider payment rates, and the limited number of providers willing to see children enrolled in Medi-Cal (California's Medicaid program)<sup>5</sup> and Healthy Families (California's Children's Health Insurance Program) as well as children with special health care needs. In fact, only 37 percent of Medi-Cal-enrolled children received dental care in 2008.<sup>6</sup> With the recent passage of health care reform, approximately 1.2 million California children are expected to gain health coverage over time, leading to an even greater mismatch between the number of available providers and the number of children seeking dental care.<sup>7</sup>

According to the American Dental Association, children should have a dental visit by their first birthday.<sup>8</sup>

Yet, 71 percent of California children suffer needlessly from poor oral health (tooth decay) by the time they reach the third grade.<sup>9</sup>

When left untreated, oral health problems can lead to costly emergency room and hospital visits. A comprehensive oral health exam costs \$60. An emergency room visit for preventive dental problems costs \$172, and surgical care or hospitalization costs \$5,044.<sup>10</sup>

**WORKFORCE SOLUTION**

One solution to meeting the dental health care needs of underserved children is expanding the dental workforce. Workforce models that utilize providers with narrowly defined scopes of practice have proven to be a successful strategy in Alaskan native communities and other countries; the use of these new providers has substantially increased children's access to needed high-quality dental care. Other states are exploring new dental workforce models, and, last year, Minnesota became the first state in the nation to authorize new provider models. Expanding the capacity of the dental team will help ensure California's children receive the dental care they so desperately need.

**CALIFORNIA CHILDREN'S DENTAL WORKFORCE CAMPAIGN**

The California Children's Dental Workforce Campaign aims to increase access to high-quality dental care for large numbers of underserved children in the most cost-effective way by expanding the capacity of the dental team. New workforce models can facilitate the delivery of urgently needed dental services, including preventive and primary dental care, in places where children and other underserved populations currently have limited access to dental care.

It makes good sense to pursue a workforce solution at this time for several reasons. In addition to addressing the current need for dental care among California's children, California must start preparing now so it is ready to meet the dental care needs of the more than one million children who will become newly insured due to health care reform. In addition, leaders in the dental, health, and consumer communities are becoming more interested in workforce solutions as they learn about the results of such models elsewhere. Finally, as a result of the upcoming elections, a new Governor and legislature entering office in 2011 will be well positioned to achieve this important win for California's children.

**Campaign Activities**

Identify Gaps in Dental Care for Children: The Campaign will pull together and analyze available data to ground the Campaign in the documented dental health care gaps California's children face. These data will also help identify workforce models that can and should fill those gaps and how to deploy such models.

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Develop Guiding Principles for Workforce Solutions: The Campaign will develop guiding principles to shape the development of the most effective workforce policy response to the dental health access needs of California's children.

Develop Proposal for New Workforce Models: Based on the information on gaps in dental care for children in California, the guiding principles developed for workforce solutions, and research on models from other states and countries, the Campaign will develop a proposal for expanding the capacity of the dental team that meets the needs of California's underserved children in the most cost-effective way.

Build the Base of Support: The Campaign will reach out to and educate, seek input from, and obtain the support of: the dental health community; the safety net health care community; rural communities; consumer advocates; the education community; the business community; communities that represent Californians from diverse ethnic and cultural backgrounds; policy-makers; and other stakeholders. The Campaign will develop materials and messages tailored to these specific audiences, demonstrating how new workforce models can meet the dental care needs of these communities. Finally, the Campaign will educate the media about the dental health care gaps children face, the urgency of this problem, and workforce solutions that fill these gaps.

Mount a Strong Policy Advocacy Campaign: Once it develops an evidence-based workforce proposal, the Campaign will work with various state agencies, the Legislature, and the Governor to translate it into a policy that California's policy-makers can support. Ultimately, the aim is to promote new workforce models that meet the dental care needs of California's children with the highest quality of care in the most efficient way.

## CONCLUSION

Children's limited access to dental care is a solvable problem. Expanding the capacity of the dental team is a commonsense solution to ensure that underserved children obtain the basic primary dental care they need so that they can grow up healthy and ready to learn. Eliminating this serious barrier will make California, once again, a leader among states and improve the life prospects of millions of children throughout California.

*The California Children's Dental Workforce Campaign is a project of The Children's Partnership (TCP), a California-based nonprofit child advocacy organization working to ensure that all children—especially those at risk of being left behind—have the resources and the opportunities they need to grow up healthy and to lead productive lives. For more information about this project, please contact Jenny Kattlove, Director of Strategic Health Initiatives, at (310) 260-1220 or [jkattlove@childrenspartnership.org](mailto:jkattlove@childrenspartnership.org). For more information about TCP, visit <http://www.childrenspartnership.org>.*



*This project is primarily supported by the Pew Center on the States, a division of The Pew Charitable Trusts that identifies and advances effective solutions to critical issues facing states. Pew is a nonprofit organization that applies a rigorous, analytical approach to improve public policy, inform the public, and stimulate civic life. More information is available at <http://www.pewcenteronthestates.org>.*

## Endnotes

<sup>1</sup>U.S. Department of Health and Human Services, National Institute of Dental and Craniofacial Research, National Institutes of Health, *Oral Health in America: A Report of the Surgeon General* (Rockville, MD: U.S. Department of Health and Human Services, 2000) 63.

<sup>2</sup>Ibid. 2.

<sup>3</sup>California HealthCare Foundation, *Snapshot: Haves and Have-Nots: A Look at Children's Use of Dental Care in California* (Oakland, CA: California HealthCare Foundation, 2008) 4.

<sup>4</sup>Nadereh Pourat and Len Flinocchio, "Racial and Ethnic Disparities in Dental Care for Publicly Insured Children," *Health Affairs*, Vol. 29, No. 7 (2010) 1359.

<sup>5</sup>Medi-Cal's dental program is called Denti-Cal.

<sup>6</sup>Medi-Cal Dental Services Division, California Department of Health Care Services. [Denti-Cal Utilization Data (2000-2008)]. Unpublished raw data.

<sup>7</sup>Based on the experience of health care reform in Massachusetts, two-thirds of all residents are likely to purchase or sign up for coverage. Given that an estimated 1,830,000 California children currently lack dental coverage (according to 2007 California Health Interview Survey), a reasonable projection is that two-thirds of these kids (1,208,400) would secure coverage through the implementation of national health care reform.

<sup>8</sup>American Dental Association, "Baby's First Teeth," *Journal of the American Dental Association*, Vol. 133 (2002): 255 ([http://www.ada.org/profl/resources/pubs/jada/patient/patient\\_11.pdf](http://www.ada.org/profl/resources/pubs/jada/patient/patient_11.pdf)).

<sup>9</sup>Dental Health Foundation, *Mommy, It Hurts to Chew: The California Smile Survey: An Oral Health Assessment of California's Kindergarten and 3rd Grade Children* (Oakland, CA: Dental Health Foundation, 2006) 14.

<sup>10</sup>Costs are medians; California HealthCare Foundation, *Snapshot: Emergency Department Visits for Preventable Dental Conditions in California* (Oakland, CA: California HealthCare Foundation, 2009) 16.



AMENDED IN SENATE MARCH 29, 2011

**SENATE BILL**

**No. 694**

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**Introduced by Senator Padilla**

February 18, 2011

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An act to add and repeal Section 1622 of the Business and Professions Code, relating to dental care.

LEGISLATIVE COUNSEL'S DIGEST

SB 694, as amended, Padilla. Dental care.

Existing law establishes within the Department of Consumer Affairs, a Dental Board of California. Existing law provides for the licensure and regulation of dentists by the Dental Board of California.

This bill would require the Director of Consumer Affairs to report to the Legislature, by September 1, 2012, regarding access to dental care. The bill would make specified findings and declarations in that regard, in collaboration with the board, to convene a working group to conduct an analysis of the dental care needs of California residents, subject to specified criteria and standards.

Vote: majority. Appropriation: no. Fiscal committee: yes.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

- 1 SECTION 1. Section 1622 is added to the Business and
- 2 Professions Code, to read:
- 3 1622. (a) The Director of Consumer Affairs, in collaboration
- 4 with the board, shall convene a working group to advise the state
- 5 on solutions to address the growing dental care needs of California
- 6 residents.

1 (b) The working group shall analyze the population of children  
2 who would be newly eligible to receive dental health services under  
3 the federal Patient Protection and Affordable Care Act (Public  
4 Law 111-148). The working group shall determine the workforce  
5 requirements to meet the needs of these newly insured children,  
6 considering the regional needs and capabilities required. The  
7 working group may engage the expertise of stakeholders to assist  
8 in this analysis.

9 (c) The analysis completed pursuant to this section shall be  
10 made available to the Legislature and the public upon request.

11 ~~SECTION 1. The Legislature finds and declares all of the~~  
12 ~~following:~~

13 ~~(a) Many Californians do not have adequate access to dental~~  
14 ~~care.~~

15 ~~(b) Tooth decay is the single most common chronic childhood~~  
16 ~~disease in the United States.~~

17 ~~(c) Nearly one-quarter of all children under 12 years of age in~~  
18 ~~California have never been to a dentist.~~

19 ~~(d) More than 1.8 million adults have not been to a dentist in~~  
20 ~~five or more years.~~

21 ~~(e) It is the intent of the Legislature to enact legislation that~~  
22 ~~would identify the best solutions to meet the current and growing~~  
23 ~~dental care needs of California's residents.~~

24 ~~SEC. 2. Section 1622 is added to the Business and Professions~~  
25 ~~Code, to read:~~

26 ~~1622. (a) The Director of Consumer Affairs shall compile~~  
27 ~~information regarding access to dental care in California. The~~  
28 ~~director shall submit a report of its findings to the Legislature by~~  
29 ~~September 1, 2012.~~

30 ~~(b) The report to be submitted pursuant to subdivision (a) shall~~  
31 ~~be submitted in compliance with Section 9795 of the Government~~  
32 ~~Code.~~

33 ~~(c) Pursuant to Section 10231.5 of the Government Code, this~~  
34 ~~section shall become inoperative on September 1, 2016, and shall~~  
35 ~~be repealed as of January 1, 2017.~~

# **AGENDA ITEM 2**

Universidad De La Salle



## MEMORANDUM

<b>DATE</b>	April 28, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Donna Kantner, Manager, Licensing and Examination Unit Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 2: Discussion and Possible Action Regarding the Renewal Application of the Universidad De La Salle</b>

### Background:

In December 2004, the Dental Board notified the Universidad De La Salle Bajio that its dental curriculum had been granted full approval according to the provisions of Section 1636.4 of the Business and Professions Code, which sets out the requirements for the evaluation, approval and renewal of foreign dental schools by the Board. Section 1636.4(g) requires that each approved institution submit a renewal application every seven years.

On January 31, 2011, the Board transmitted via overnight mail a renewal application and copies of the applicable statutes and regulations, requesting that the renewal application be returned no later than May 1, 2011 to conform to regulatory timelines.

Staff has submitted a request for out-of-state travel for four members of a site visit team to perform an evaluation of the school. All such requests must be approved by the Director of the Department of Consumer Affairs, the Agency Secretary, and the Governor's Office. The request is currently in the Executive Office awaiting the Director's approval. Meanwhile, last week Governor Brown issued Executive Order B-06-11 eliminating all state travel except non-discretionary and mission critical travel.

At its February 24, 2011 meeting, the Board voted that a subcommittee be created to review the renewal application and documents when submitted by the school. President Bettinger appointed Dr. Huong Le and Dr. Steven Morrow to perform the review.

The renewal package was received by staff at the Board office on Friday, April 29, 2011 and copies of it were forwarded to the subcommittee for review on Monday, May 2, 2011. The renewal application is currently under review.

On May 2, Drs. Le and Morrow met via teleconference with the Board's Legal counsel Kristy Shellans and her supervisor Don Chang and Richard DeCuir. The consensus at the meeting was that the Board has the option to extend the review and approval process. Drs. Le and Morrow along with Ms. Shellans will further elaborate at the meeting.

# **AGENDA ITEM 3(A)**

**Comments: CPEI**



## MEMORANDUM

<b>DATE</b>	May 3, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 3(A):</b> Discussion and Possible Action to Consider Comments Received During the 45-Day Public Comment Period Relative to the Proposed Addition of Title 16, CCR, Section 1018.05 and the Proposed Amendment to Title 16, CCR, Section 1020 for the Consumer Protection Enforcement Initiative

### Background:

During the November 5, 2010 meeting, the Board approved the proposed addition of section 1018.05 and the proposed amendment of section 1020 of Title 16 of the California Code of Regulations relative to the Consumer Protection Enforcement Initiative. The Board directed staff to initiate a rulemaking.

The initial rulemaking documents were filed with the Office of Administrative Law on February 7, 2011. The 45-day public comment period began on February 18, 2011 and ended on April 4, 2011. The regulatory hearing was held on April 4, 2011. The California Dental Association submitted comments in response to the proposed text.

### Staff Recommendations

The California Dental Association expressed concern regarding the subjective nature of the examination of an applicant for a mental or physical illness whenever the applicant "appears" to be unable to safely practice. Staff recommends rejection of this comment. Staff believes the commonly understood meaning of "appears" is sufficiently clear. Appears means "to have the appearance of being; seem; look" (Random House Dictionary, © Random House, Inc. 2011.) Therefore, if the Board has factual evidence in a specific case that a person seems like they may have a physical or mental condition affecting competency, the Board may refer for an examination. The applicant's rights are protected by the confidentiality of the process and double-checked by an independent expert evaluating the facts presented to him or her. At the same time, the Board ensures that the public is protected by the Board's further investigation into competency before a license is issued.

The applicant bears the burden of proof of their fitness for competency to practice. The proposed regulatory language is derived from existing law, Business and Professions Code Section 820, and licensing agencies within the Department of Consumer Affairs have used this provision without issue. Additionally, the examination would be performed on a case by case basis by a professional expert trained to perform examinations for mental or physical competency.

Additionally, the California Dental Association was concerned that the proposed regulatory language appeared to only allow the Board the option of outright denial of the application for licensure if the requested examination leads to concerns. Staff recommends modifying the text to address these concerns, maintain consistency with the "Dental Board of California Disciplinary Guidelines With Model Language", revised 8/30/2010, and provide a higher level of due process for the applicant, while still maintaining protection of the public. Staff recommends modifying the proposed regulatory language in Section 1020 as follows:

**§ 1020. Application Review and Criteria for Evaluating Rehabilitation.**

(a)(1) In addition to any other requirements for licensure, when considering the approval of an application, the Board or its designee may require an applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board if it appears that the applicant may be unable to safely practice due to mental illness or physical illness affecting competency. An applicant's failure to comply with the examination requirement shall render his or her application incomplete. The report of the examiners shall be made available to the applicant. The Board shall pay the full cost of such examination. If after receiving the report of evaluation, the Board determines that the applicant is unable to safely practice, the Board may deny the application, or may issue the applicant a license that is placed on probation with terms and conditions. If the Board issues a license on probation, the probationary order shall include an order that the license be revoked, stayed and placed on probation for the entire term of probation. In issuing a license on probation, the Board may consider any or all of the following terms and conditions:

(i) Requiring the licensee to obtain additional training or pass an examination upon completion of training, or both. The examination may be written, oral, or both, and may be a practical or clinical examination or both, at the option of the Board;

(ii) Requiring the licensee to submit to a mental or physical examination, or psychotherapy during the term of probation under the terms and conditions provided for in the "Dental Board of California Disciplinary Guidelines With Model Language" revised 08/30/2010, incorporated by reference at Section 1018; or,

(iii) Restricting or limiting the extent, scope or type of practice of the licensee.

In addition to the proposed modifications to address the California Dental Association's concerns, staff recommends adding language to Section 1020(a) to provide for the

confidentiality of examination records if there is insufficient evidence to bring an action against the applicant. Staff recommends maintaining the records for a period of five years from the date of determination. If no further proceedings are conducted to determine the licensee's fitness to practice within the five years, staff recommends the records be purged and destroyed. However, if new proceedings are conducted during the five year period, staff recommends authorizing the Board to utilize the records of the examination in the proceedings. These provisions regarding confidentiality of the examination and the destruction of insufficient evidence are consistent with those privacy protections provided to licensees at Section 828 of the Business and Professions Code. Staff recommends the addition of Section 1020(a)(2) as follows:

(2) If the Board determines, pursuant to proceedings conducted under this subdivision, that there is insufficient evidence to bring an action against the applicant, then all Board records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential. If no further proceedings are conducted to determine the applicant's fitness to practice during a period of five years from the date of the determination by the Board of the proceeding pursuant to this subdivision, then the Board shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the applicant by the Board, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the Respondent pursuant to the provisions of Section 11507.6 of the Government Code.

#### **Board Action Requested**

The Board may take action to accept or reject the comments. A rationale must be provided for any comments that are rejected. If comments are accepted, and the regulatory language is modified, the modified text must be noticed for a 15-day public comment period, and any negative comments received during that time must be brought back to the Board for a response.





April 4, 2011

Dental Board of California  
Sarah Wallace, Legislative and Regulatory Analyst  
2005 Evergreen Street, Suite 1550  
Sacramento, CA 95815

RE: Consumer Protection Enforcement Initiative -- Proposed Regulations

Dear Ms. Wallace,

The California Dental Association appreciates the opportunity to comment on the Dental Board's proposed regulations to implement portions of the Department of Consumer Affairs' Consumer Protection Enforcement Initiative (CPEI). Our comments are limited to the proposed additions to Section 1020 of Division 10 of Title 16 of the California Code of Regulations, allowing the board to require a medical or psychological evaluation of a licensure applicant.

While we understand the premise behind the proposed regulations, which largely mirror existing statutes for practitioners who are already licensed (Article 12.5 of the Business and Professions Code), we nevertheless have concerns about the highly subjective nature of the process when it would be applied at the license application stage. The proposed regulations would allow the board to require a physical or mental examination whenever an applicant "appears" to be unable to safely practice. This seems to be a rather vague standard to place into regulation. It is not clear what circumstances would create such an "appearance" in spite of the fact that the applicant presumably has otherwise met all of the qualifications for licensure. We are also concerned that the language as drafted appears to allow only the option of denying the license outright if the requested examination leads to concerns.

Given that the proposed language would be placed into an existing regulatory section dealing with rehabilitation conditions in the event of criminal activity (rather than into Article 3 dealing with general rules for examinations, which may be a more appropriate place for this language), we would like to suggest that the board consider modifying the language to incorporate provisions closer to those now contained in B&P Code Section 1671 (Conditions of Probation). For example, Section 1671(b) allows the board to require a "complete diagnostic examination...if warranted by the physical or mental condition of the licentiate," and also allows the licentiate to submit another "diagnostic examination given by one or more physicians of the licentiate's choice." We believe that incorporating equivalent language for licensure applicants would provide a higher level of due process for the applicant, while providing the up-front protection of the public that is appropriately intended by the regulations.

Thank you for your consideration of our comments.

Sincerely,

Bill Lewis  
Legislative/Regulatory Analyst

**California Dental Association**

1201 K Street, 14<sup>th</sup> Floor, Sacramento, CA 95814 | t. 800.232.7645 | p. 916.443.0505 | f. 916.443.2943 | cda.org

# **AGENDA ITEM 3(B)**

**Adoption: CPEI**



## MEMORANDUM

<b>DATE</b>	May 3, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 3(B):</b> Discussion and Possible Action to Consider Adoption of the Proposed Addition of Title 16, CCR, Section 1018.05 and the Proposed Amendment to Title 16, CCR, Section 1020 for the Consumer Protection Enforcement Initiative

### **Background:**

Following the Board's consideration of comments received during the required 45-day public comment period, the Board may hold discussion and take action to adopt proposed amendments to California Code of Regulations, Title 16, Sections 1018.05 and 1020 for the Consumer Protection Enforcement Initiative.

### **Action Requested:**

Depending on the Board's response to the comment, staff requests the Board take one of the following actions:

- A. If the Board rejects the comment, then the Board would:  
Adopt the final text as noticed 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 Title 16, CCR, Sections 1018.05 and 1020.
- B. If the Board accepts the comment, then the Board would:  
Modify the text in response to the comment 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 amendments to Title 16, CCR, Sections 1018.05 and 1020 as noticed in the modified text.

**TITLE 16. DENTAL BOARD OF CALIFORNIA  
DEPARTMENT OF CONSUMER AFFAIRS**

**PROPOSED MODIFIED TEXT**

The modified text shows changes made to the originally proposed language using double underline for new text and double strikeout for deleted text.

Adopt Article 4.6 in Chapter 1 of Division 10 of Title 16 of the California Code of Regulations to read:

**ARTICLE 4.6**  
**Unprofessional Conduct**

**§ 1018.05 Unprofessional Conduct Defined.**

In addition to those acts detailed in Business and Professions Code Sections 1680, 1681 and 1682, the following shall also constitute unprofessional conduct:

(a) Failure to provide records requested by the ~~the~~ Board within 15 days of the date of receipt of the request or within the time specified in the request, whichever is later, unless the licensee is unable to provide the documents within this time period for good cause. For the purposes of this section, "good cause" includes physical inability to access the records in the time allowed due to illness or travel.

(b) Failure to report to the ~~the~~ Board, within 30 days, any of the following:

(1) The bringing of an indictment or information charging a felony against the licensee.

(2) The conviction of the licensee, including any verdict of guilty, or pleas of guilty or no contest, of any felony or misdemeanor.

(3) Any disciplinary action taken by another professional licensing entity or authority of this state or of another state or an agency of the federal government or the United States military.

(4) For the purposes of this section, "conviction" means a plea or verdict of guilty or a conviction following a plea of nolo contendere or "no contest" and any conviction that has been set aside or deferred pursuant to Sections 1000 or 1203.4 of the Penal Code, including infractions, misdemeanors, and felonies. "Conviction" does not include traffic infractions with a fine of less

than one thousand dollars (\$1,000) unless the infraction involved alcohol or controlled substances.

Note: Authority cited: 1614, Business and Professions Code. Reference: Sections 1670, 1670.1, and 1680, 1684.1 Business and Professions Code.

Amend Section 1020 of Division 10 of Title 16 of the California Code of Regulations to read:

**§ 1020. Application Review and Criteria for Evaluating Rehabilitation.**

(a)(1) In addition to any other requirements for licensure, when considering the approval of an application, the Board or its designee may require an applicant to be examined by one or more physicians and surgeons or psychologists designated by the Board if it appears that the applicant may be unable to safely practice due to mental illness or physical illness affecting competency. An applicant's failure to comply with the examination requirement shall render his or her application incomplete. The report of the examiners shall be made available to the applicant. The Board shall pay the full cost of such examination. If after receiving the report of evaluation, the Board determines that the applicant is unable to safely practice, the Board may deny the application, or may issue the applicant a license that is placed on probation with terms and conditions. If the Board issues a license on probation, the probationary order shall include an order that the license be revoked, stayed and placed on probation for the entire term of probation. In issuing a license on probation, the Board may consider any or all of the following terms and conditions:

(i) Requiring the licensee to obtain additional training or pass an examination upon completion of training, or both. The examination may be written, oral, or both, and may be a practical or clinical examination or both, at the option of the Board:

(ii) Requiring the licensee to submit to a mental or physical examination, or psychotherapy during the term of probation under the terms and conditions provided for in the "Dental Board of California Disciplinary Guidelines With Model Language" revised 08/30/2010, incorporated by reference at Section 1018; or,

(iii) Restricting or limiting the extent, scope or type of practice of the licensee.

(2) If the Board determines, pursuant to proceedings conducted under this subdivision, that there is insufficient evidence to bring an action against the

applicant, then all Board records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential. If no further proceedings are conducted to determine the applicant's fitness to practice during a period of five years from the date of the determination by the Board of the proceeding pursuant to this subdivision, then the Board shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the applicant by the Board, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the Respondent pursuant to the provisions of Section 11507.6 of the Government Code.

~~(a)~~(b) When considering the denial of a license under Section 480 of the Code, the Board in evaluating the rehabilitation of the applicant and his present eligibility for a license, will consider the following criteria:

- (1) The nature and severity of the act(s) or crime(s) under consideration as grounds for denial.
- (2) Evidence of any act(s) committed subsequent to the act(s) or crime(s) under consideration as grounds for denial which also could be considered as grounds for denial under Section 480 of the Code.
- (3) The time that has elapsed since commission of the act(s) or crime(s) referred to in subdivision (1) or (2).
- (4) The extent to which the applicant has complied with any terms of parole, probation, restitution, or any other sanctions lawfully imposed against the applicant.
- (5) Evidence, if any, of rehabilitation submitted by the applicant.

~~(b)~~(c) When considering the suspension or revocation of a license on the grounds of conviction of a crime, the Board, in evaluating the rehabilitation of such person and his present eligibility for a license will consider the following criteria:

- (1) The nature and severity of the act(s) or offense(s);
- (2) Total criminal record;

(3) The time that has elapsed since commission of the act(s) or offense(s);

(4) Whether the licensee has complied with any terms of parole, probation, restitution or any other sanctions lawfully imposed against the licensee;

(5) If applicable, evidence of expungement proceedings pursuant to Section 1203.4 of the Penal Code;

(6) Evidence, if any of rehabilitation submitted by the licensee.

~~(e)~~(d) When considering a petition for reinstatement of a license, the ~~b~~Board shall evaluate evidence of rehabilitation, considering those criteria of rehabilitation listed in subsection ~~(b)~~(c).

Note: Authority cited: Sections 482 and 1614, Business and Professions Code.  
Reference: Section 480, 482, 820, Business and Professions Code; Section 11519, Government Code.

# **AGENDA ITEM 4(A)**

**Comments: Uniform Standards**





## MEMORANDUM

<b>DATE</b>	May 11, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 4(A):</b> Discussion and Possible Action Regarding Status and 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

### **Background:**

During the February 25, 2011 meeting, the Board approved proposed amendments to Sections 1018 and 1020.5 of Title 16 of the California Code of Regulations relative to the Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines.

The initial rulemaking documents were filed with the Office of Administrative Law on March 11, 2011. 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 in the Hearing Room located at 2005 Evergreen Street, Sacramento, CA 95815.

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*.

Due to the close proximity of the regulatory hearing and the scheduled Board meeting, staff has not had sufficient time to thoroughly evaluate the comments received in response to the proposed regulation as well as develop proposed modified text to use the SACC's revised *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*.

### **Board Action Requested**

There is no board action required at this time.

# **AGENDA ITEM 4(B)**

**Adoption: Uniform Standards**



## MEMORANDUM

<b>DATE</b>	May 11, 2011
<b>TO</b>	Dental Board of California
<b>FROM</b>	Sarah Wallace, Legislative & Regulatory Analyst Dental Board of California
<b>SUBJECT</b>	<b>Agenda Item 4(B):</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

**Background:**

Due to the close proximity of the regulatory hearing and the scheduled Board meeting, staff has not had sufficient time to thoroughly evaluate the comments received in response to the proposed regulation as well as develop proposed modified text to use the SACC's revised *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*.

**Action Requested:**

There is no board action required at this time.