



**Dental Board of California
Meeting Minutes
Tuesday, December 4, 2012**

Embassy Suites LAX/South
1440 East Imperial Avenue, El Segundo, CA 90245

Members Present:

Bruce Witcher, DDS President
Huong Le, DDS, Vice President
Fran Burton, Secretary
Steve Afriat, Public Member
Stephen Casagrande, DDS
Luis Dominicus, 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
April Alameda, Investigative Analysis Unit Manager
Jocelyn Campos, Enforcement Coordinator
Sarah Wallace, Legislative and Regulatory Analyst
Karen Fischer, Special Assistant to the Executive Officer
Linda Byers, Executive Assistant
Spencer Walker, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Dr. Bruce Witcher, President, called the meeting of the Dental Board of California to order at 8:33 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 10:35 a.m.

AGENDA ITEM 5A: Approval of the August 16-17, 2012 Full Board Meeting Minutes
M/S/C (Afriat/Le) to approve the August 16-17, 2012 Full Board meeting minutes. The motion passed unanimously.

AGENDA ITEM 5B: Approval of the October 24, 2012 Dental Board Teleconference

Minutes

M/S/C (Dominicis/McCormick) to approve the October 24, 2012 Dental Board Teleconference minutes. The motion passed with two abstentions.

AGENDA ITEM 6: President's Report

Dr. Whitcher gave an overview of his activities since the last Board meeting including attendance at the California Dental Association (CDA) Cares event in Sacramento, the California Association of Oral and Maxillofacial Surgeons (CALAOMS) meeting in San Diego, and, along with many of the other Board members, the American Dental Association (ADA) meeting in San Francisco. Dr. Whitcher recognized members of the audience including, Teri Lane, Vickie Williams, Denise Macy, investigative staff from the Dental Board's Orange county office, and Dr. Rich Liebig, one of the Dental Board's Consultants. Dr. Whitcher presented awards to Richard DeCuir, Executive Officer, and Denise Johnson, Assistant Executive Officer in honor of their retirements. Ms. Angie English from Senator Curran Price's office presented Mr. DeCuir with a California State Resolution in honor of his dedication and service to the people of California. Bill Lewis, commented that on behalf of CDA, he would like to express their gratitude for the work that Mr. DeCuir has done and wish him well on his retirement. Dr. Whitcher presented Shawn Cook, Deputy District Attorney from Orange County, with a special recognition from the Board for his outstanding service to the Dental Board. Greg Salute expressed gratitude on behalf of the Attorney General's office for the service Mr. DeCuir and Ms. Johnson have provided through the years. Dr. Lori Gagliardi also congratulated and thanked Richard and Denise on behalf of CADAT. Dr. Whitcher thanked Rebecca Downing for her service on the Dental Board. He also thanked Dr. John Bettinger, past Board president, for his service on the Dental Board and he presented them both with commemorative plaques. Dr. Whitcher thanked Dr. Luis Dominicis for his service on the Dental Board, he has reapplied to continue serving on the Board and we are awaiting his reappointment. Dr. Whitcher welcomed Karen Fischer as the Interim Executive Officer.

The Board recessed until 11:15 a.m.

AGENDA ITEM 8: Election of Dental Board of California Officers for 2013

M/S/C (Burton/Afriat) to nominate Dr. Huong Le for President of the Dental Board of California. There were no other nominations. The motion passed unanimously.

Dr. Whitcher opened the floor to nominations for Vice President. Ms. Rebecca Downing nominated Ms. Fran Burton for Vice President; Dr. Suzanne McCormick nominated Dr. Thomas Olinger as Vice President. The vote was taken and the majority of votes went to Ms. Fran Burton. Dr. Whitcher declared Ms. Burton the new Vice-President of the Dental Board of California.

Dr. Whitcher opened the floor to nominations for Secretary. Ms. Fran Burton nominated Dr. Thomas Olinger for Secretary. There were no other nominations. The vote was unanimous. Dr. Whitcher declared Dr. Thomas Olinger the new Secretary of the Dental Board of California.

M/S/C (Morrow/Afriat) to reconsider Agenda Item 2: Discussion and Possible Action Regarding the Review and Prioritization of Regulatory Packages and Subcommittee Assignments. The motion passed unanimously. Dr. Morrow clarified that while the dental education community is moving rapidly toward the exclusive use of digital imaging for diagnostic radiographs; he did

not mean to imply that the dental education community is eliminating the analog method of imaging from its instruction programs. Dr. Witcher stated that when rewriting the regulations for our Radiation Safety Standards course, it is important that we focus on safety issues not technology issues.

AGENDA ITEM 7: Executive Officer's Report - Attorney General Expenditures for the Dental Assisting Program

Richard DeCuir, Executive Officer wished Karen Fischer, Interim Executive Officer, the best of luck and stated that the Board was in very capable hands. He reported that he had frozen the Attorney General's expenditures for Registered Dental Assistant Cases. He will explain further during the budget report. Mr. DeCuir reported that he has been in contact with the Appointments Office and they are preparing files to take to the Governor for signature. He stated that the contract with OPES to perform the Occupational Analysis on WREB will be completed by June 2013. Karen Fischer, Interim Executive Officer, reported that the Diversion Evaluation Committee (DEC) is recruiting for DEC members. Northern California is recruiting for two dentist positions and southern California is recruiting for one Dental Auxiliary. Ms. Fischer thanked Greg Salute, Deputy Attorney General, and Teri Lane, Supervising Investigator Southern California, for their outreach efforts at the Dental Schools. They have been very well received by the fourth year dental students where they make presentations regarding areas to be careful about when they go into practice. Ms. Fischer also recognized Shirley Boldrini and Inspector in the Sacramento office who has maintained her RDA license and regularly volunteers in the community most recently at the CDA Cares event at Cal Expo. Ms. Fischer thanked the Board for giving her the opportunity to assist the Board. Dr. Le thanked the Board for their vote of confidence in electing her Board President. Dr. Le thanked Dr. Witcher for his mentoring, his leadership and his service as the Board's President.

AGENDA ITEM 9: Update from the Department of Consumer Affairs Executive Office

The Department of Consumer Affairs Executive Office was unable to attend due to other commitments.

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

Activities

The Dental Hygiene Committee of California was unable to participate due to the fact that their Committee meeting was scheduled on the same day as the Board meeting.

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

Richard DeCuir, Executive Officer reported that for Fiscal Year (FY) 2012-13, the Board's budget is broken into two separate appropriation accounts which together total a Board appropriation of \$13,140,000 [\$11,410,000 (Dentistry Fund) + \$1,730,000 (Dental Assisting Fund) = \$13,140,000 (Total Board Appropriation)].

Documents provided were intended to give an expenditure summary of the current fiscal year for the Dentistry and Dental Assisting funds. In addition, documents were enclosed that are called Fund Conditions, they projected the Board's fiscal solvency in each fund for the current and future fiscal years. For the Dental Assisting Fund, a letter was included from Senior Assistant Attorney General Alfredo Terrazas to the Department of Consumer Affairs Director Denise Brown confirming the temporary suspension of processing of low priority dental assisting enforcement cases.

The specifics surrounding the Board's two appropriations and expenditures are as follows:

Dentistry

The Board's Dentistry expenditures are based upon the September CALSTARS report that came out in October 2012. According to that report, the Board spent roughly \$2.6 million of its (FY) 2012-13 Dentistry budget appropriation. Approximately \$1.2 million of the expenditures was Personnel Services, and roughly \$1.3 million of the expenditures was Operating Expense & Equipment (OE&E). Based on these expenditures, the Board is projected to revert back to the Dentistry Fund approximately \$560,000.

Also attached are Fund Conditions which are intended to project future revenues, expenditures, and balances. The Dentistry Fund Condition includes repayment of the remaining \$2.7 million outstanding loan repayment split into multiple fiscal years; \$1.35 million in (FY) 2013-14, and \$1.35 million in (FY) 2014-15.

(At the end of Fiscal Year (FY) 2011-12, the Dentistry Fund was repaid \$1.7 million of the \$4.4 million outstanding loan repayment.) Based on the fund condition analysis, the Dental Board will end (FY) 2014-15 with a **negative balance** of \$2,545 million. However, this does not take into account the Dental Board fee increase for licensure that is projected to take place within the next twelve (12) to eighteen (18) months. Underexpenditures which have been averaging approximately \$1million/year are also not factored into these projections.

Dental Assisting

For Dental Assisting, the Board requested an update of Dental Assisting expenditures based on the October CALSTARS report that came out in November 2012. According to this report, the Board had spent roughly \$644,000 of its current year budget appropriation. Approximately \$181,000 of the expenditures were Personnel Services, and roughly \$463,000 of the expenditures were Operating Expense & Equipment. Due to the enormous increase in Attorney General (AG) Expenditures for Dental Assisting, the Board is not projecting a reversion back to the Dental Assisting Fund. In fact, the current year expenditure report projected an over expenditure of approximately \$170,000. The primary reason for the continued over expenditure is the Attorney General line item. For the last fiscal year the Board's AG budget was approximately \$60,000, while the actual expenditures exceeded \$255,000. For the current year, the Board's Dental Assisting budget is approximately \$67,000. Projected expenditures are estimated at \$270,000. [NOTE: There is a provision in the Government Code that specifies that if the Executive Officer knowingly overspends his/her budget; he/she can be held professionally and personally liable. (Something neither Mr. DeCuir nor Ms. Fischer intend to see occur)]. They have taken steps to ensure that the Dental Board spends within their total authorization including minimizing overtime unless absolutely necessary and mission critical, and more importantly, suspending the AG processing of dental assisting cases, except priority cases. The letter referenced above from Alfredo Terrazas confirmed this temporary suspension. Mr. DeCuir and Ms. Fischer have been in contact with the Department of Consumer Affairs Budget Office and Department of Finance to secure a current year budget augmentation to cover the projected AG expenditures. This augmentation could take 30-90 days to secure. If approved, the suspension will be lifted. Once the augmentation has been granted, Ms. Fischer will facilitate a Budget Change Proposal (BCP) to make the augmentation permanent. Mr. Afriat commented that there is a cost recovery associated with cases. Isn't that supposed to cover the cost of the cases? Mr. DeCuir answered that that was certainly the intent but there is not full cost recovery on stipulations. Spencer Walker, Senior Legal Counsel stated that the law only allows for a "reasonable amount" on cost recovery. An Administrative Law Judge may lower the amount

of cost recovery in a proposed decision. Ms. Denise Johnson, Assistant Executive Officer added that there is generally no cost recovery in revocation cases. Ms. Burton asked if in the review of the seventy-six RDA cases at the Attorney General's Office any trends were found that could be addressed by working with the schools. Mr. DeCuir stated that a high percentage of the cases stem from prior convictions.

AGENDA ITEM 12: Update Regarding the Dental Board of California (DBC) and the Dental Hygiene Committee of California (DHCC) Annual Review of the Minimum Standards for Infection Control

Sarah Wallace, Legislative and Regulatory Analyst reported that Dr. Witcher, Dental Board President, and Alex Calero, Dental Hygiene Committee of California (DHCC) President, appointed members to a subcommittee to review and provide recommendations to the DHCC, Dental Assisting Council, and the Board regarding the annual review of the Minimum Standards for Infection Control. (California Code of Regulations, Title 16, Section1005)

The subcommittee members and assigned staff are as follows:

Huong Le, DDS – DBC Member
Noel Kelsch, RDHAP – DHCC Member
Denise Romero, RDA – Dental Assisting Council Member
Lori Hubble, DHCC Executive Officer
Sarah Wallace, Dental Board Legislative/Regulatory Analyst

Subcommittee members were provided with a copy of the current regulatory text. They were asked to review it, note any questions, comments and concerns, and to email those comments to Ms. Wallace so that a subcommittee working document can be developed. A preliminary review of the Center for Disease Control (CDC) Guidelines for Infection Control indicated that there have not been any new recommendations regarding infection control in the dental setting.

Staff will contact the subcommittee after the holidays to schedule a teleconference meeting sometime mid to late January 2013 to discuss the review and how to move forward.

AGENDA ITEM 13: Enforcement Committee Report

Dr. Le, Vice Chair of the Enforcement Committee reported that under the leadership of Chief Kim Trefry the Enforcement Unit continues to improve. She stated that for the first time ever the Enforcement Unit has a procedure Manual which has been used to conduct training. She reported that staff is struggling to get its vehicle fleet updated. Dr. Le also reported that Sarah Wallace developed a printable notice for the Dental Board's website for the implementation of the Notice to Consumers and has received very positive feedback on the simplicity of downloading and printing the notice making compliance with this new regulation very easy. M/S/C (Afriat/Dominicis) to accept the committee report. The motion passed unanimously.

AGENDA ITEM 14: Examination Committee Report

Dr. Casagrande, Chair of the committee reported that OPES will conclude their analysis of the WREB examination by June 2013. He reported that Portfolio is closer to implementation. The candidate handbook and Examiner Training Manual have been drafted and will be reviewed in the next two weeks. Dr. Witcher asked that the Dean's of the Dental schools be kept informed regarding the progress of Portfolio. The American Dental Association (ADA) is waiting for us to complete our Portfolio program so that they can use it as a template for a National program of

a Portfolio type examination. Dr. Casagrande stated that he is hopeful that the graduating dental school class of 2014 will be able to experience Portfolio. M/S/C (Afriat/McCormick) to accept the committee report. The motion passed unanimously.

AGENDA ITEM 15: Licensing, Certification & Permits Committee Report

Dr. Olinger, Chair of the committee reported that during Closed Session the committee voted to reinstate 1 dental license and 3 RDA licenses. He reported that the committee reviewed the Licensure, Certification and Permits statistics. Dr. Olinger mentioned that the committee noticed that no one failed an evaluation but some were non-compliant which raised the question as to what non-compliant meant. Ms. Denise Johnson informed the committee that those who failed to set up an appointment for an evaluation were deemed non-compliant. Ms. Sarah Wallace informed the committee that the Sponsored Free Health Care Events regulations are complete and would go into effect Friday December 7, 2012. Notifications were sent out and the Board's website was updated. Dr. Witcher commented that he has taught the calibration course for new General Anesthesia/Conscious Sedation Evaluators that is traditionally held in the Spring. He stated that with the help of staff member Jessica Olney they are going to try giving the course via webinar. Hopefully this will broaden the participant base and bring in new evaluator candidates. Dr. Bettinger commented that AB 269 required the Board to collect data on licensees; he asked if those statistics were being reported. Dr. Witcher stated that there was a subcommittee report given at the last Board meeting regarding those statistics. Dr. Bettinger asked if there was a license associated with coronal polishing or if it was just a certificate of completion. Denise Johnson, Assistant Executive Officer stated that Coronal Polish is a certification. M/S/C (Olinger/Dominicis) to accept the Licensing, Certification and Permits Committee report. The motion passed unanimously.

AGENDA ITEM 16: Dental Assisting Council Report

Judy Forsythe, Chair of the Council reported that April Alameda has assumed the duties as Manager of the Dental Assisting unit. Ms. Forsythe stated that Sarah Wallace conducted a training session for the Dental Assisting Council members regarding, among other topics, the Legislative Process and the Bagley-Keene Open Meeting Act and how they relate to the Council. The training was well received and attendees agreed that it helped provide clarity to a series of procedural questions. Ms. Forsythe reported that an update was given regarding the status of Dental Assisting Programs and Courses. She stated that Dental Assisting Licensure and Permit statistics, as well as examination statistics were also reviewed. Ms. Forsythe reported that the new Registered Dental Assistant (RDA) written examination was implemented in March 2012. An updated RDA Law and Ethics examination was implemented in November 2012, the Orthodontic Assistant written examination is in the final stages of being updated and staff has contracted with the Office of Professional Examination Services (OPES) to review and possibly update the Registered Dental Assistant in Extended Functions (RDAEF) examination and the Dental Sedation Assistant examination. Ms. Forsythe stated that there was discussion regarding the need for retaining an RDA license once an RDAEF license has been obtained. Staff and Board Council are researching this issue and will report back at a future meeting. The California Association of Dental Assisting Teachers (CADAT) submitted proposed regulatory amendments to Radiation Safety Course requirements. The subcommittee of Anne Contreras and Emma Ramos conducted a review of CADAT's proposal and provided comments. The proposal was posted on the Board's website and staff, Board members and stakeholders were encouraged to submit comments directly to Sarah Wallace or Karen Fischer by December 28, 2012.

M/S/C (Afriat/McCormick) to accept the Dental Assisting Council Report.

During the public comment period, Dr. Bettinger, past Board President, requested that the Dental Assisting Council place an item on their next agenda to discuss a definitive procedure for Coronal Polish so that it can become a billable procedure with an American Dental Association (ADA) code. Dr. Whitcher stated that ADA decides codes not the Dental Board. Dr. Whitcher appointed Judy Forsythe and Anne Contreras to a subcommittee to work on the Regulations related to Radiation Safety Course Requirements.

The previous motion to accept the Dental Assisting Council report passed unanimously.

AGENDA ITEM 17: Legislative and Regulatory Committee Report

Fran Burton, Chair of the Legislative and Regulatory Committee reported that the tentative Legislative calendar had yet to be released. She remarked that the Legislative and Regulatory Committee acted on an unprecedented number of bills last year most notably SB 540 also known as Sunset Review, which extended the existence of the Dental Board until January of 2016. The committee reviewed provisions for inclusion in the Omnibus Bill package. She stated that the Committee voted to submit technical changes to Section 1630 regarding the Dental Board Seal which currently refers to the Board as the Board of Dental Examiners. A second proposal regarding the use of the Board's logo was reviewed but it was decided that a discussion with the Business and Professions Committee was needed before bringing the item back. She further reported that there was discussion regarding Mobile Dental Clinics particularly those operated by Dental Schools. There was a request to gather information to present at a future meeting regarding how many Mobile Dental Clinics are operated by Dental Schools and how they are registered.

Dr. John Bettinger, past Board President, proposed an Agenda Item regarding the Board's website and the wording related to Botox and Dermal Fillers. He stated that Botox is a brand name of a neurotoxin and needs to be generalized and there is no mention of dermal fillers. He asked that a subcommittee be appointed and volunteered to be a part of the process.

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

AGENDA ITEM 18: Report on the October 3, 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. Whitcher, Board President, reported that the Elective Facial Cosmetic Surgery (EFCS) Committee met via teleconference on October 13, 2012. The Committee revisited proposed regulatory language that was presented at the April meeting. The Committee provided feedback to staff on the proposed regulatory changes. They reviewed and discussed the new application for an EFCS permit and provided staff with direction regarding necessary additions and modifications. A subcommittee was developed to discuss various issues regarding the application process providing staff with more conclusive documentation to bring to the Committee.

In closed session the Committee reviewed two applications. The Committee recommended that the Board grant applicant number one, Dr. Alexander V. Antipov, 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).

M/S/C (Dominicis/Afriat) to accept the Elective Facial Cosmetic Surgery Committee's recommendation. The motion passed unanimously.

The EFCS Committee recommended rejection of Applicant number two, Dr. S.R.' request for unlimited privileges for Category I (cosmetic contouring of the osteocartilaginous facial structure, which may include, but not limited to, rhinoplasty and otoplasty), and have staff request clarification on what procedures the applicant intends to perform.

M/S/C (Olinger/ McCormick) to accept the Elective Facial Cosmetic Surgery Committee's recommendation and have staff request clarification on what procedures the applicant intends to perform. The motion passed unanimously.

Dr. Casagrande asked that the Board be apprised on any Enforcement issues regarding EFCS permit holders. Karen Fischer, Interim Executive Officer stated that the Board is required to send a report to the Legislature every four years regarding the EFCS permit holder program. Staff is in the process of preparing that administrative report letting them know how many permit holders there are and if any complaints have been filed against them. Spencer Walker, Board Counsel stated that the Board can be apprised of the receipt of a complaint but no names can be given.

Dr. John Bettinger, past Board President, asked if the injection of neurotoxins and dermal fillers is within the scope of the EFCS Committee because we are issuing permits for the use of those products. Although the Medical community considers them to be non-surgical procedures; the EFCS statute, 1638.1 refers to Cosmetic Surgical Procedures performed on normal tissue. Dr. Bettinger asked that the EFCS Committee place this item on their next agenda for discussion.

AGENDA ITEM 19: Update on Actions Taken to Implement the Patient Protection and Affordable Care Act

Sarah Wallace, Legislative and Regulatory Analyst reported that on January 1, 2014, the federal Patient Protection and Affordable Care Act (PPACA) will require a health insurance issuer that offers coverage in a small group or individual market to ensure that such coverage includes the essential health benefits package, as defined. The PPACA requires each state to establish an American Health Benefits Exchange that facilitates the purchase of qualified health plans by qualified individuals and qualified small employers by January 1, 2014. The PPACA defines a qualified health plan as a plan that, among other requirements, provides an essential health benefits package.

Existing state law created the California Health Benefit Exchange (Exchange) and their Board. In the last year two bills have been signed by the Governor; AB 1453 and SB 951. The bills were contingent upon each other. One made changes to the Health and Safety Code and impacted the Department of Managed Health Care Services and the other made changes to the insurance code and impacted the Department of Insurance. The bills adopted uniform, minimum, essential benefits requirements for the state regulated health care coverage. Ms. Wallace stated that at this time it is unknown what the impact will be on the Dental Board and dentistry in California for adults but it is known that there will be changes to pediatric dentistry coverage.

PUBLIC COMMENT FOR ITEMS NOT ON THE AGENDA

There were no public comments.

FUTURE AGENDA ITEMS

Dr. John Bettinger, past Board President, asked that his previous request for an agenda item regarding the posted description of the use of Botox be agendaized and discussed as neurotoxins instead. He went on to relate the problems he sees with the current description. He stated that he would be happy to work with staff. He stated that he was asked by the Southern California Association of General Dentists (SCAGD), who are sponsoring Botox courses, to comment on what the Board policy was.

BOARD MEMBER COMMENTS FOR ITEMS NOT ON THE AGENDA

Dr. Casagrande thanked Dr. Witcher for his service as President and he wished Dr. Le luck as President next year. Dr. Olinger echoed those sentiments.

The meeting was adjourned at 1:25 p.m.