



**Dental Board of California Meeting
September 15, 2009
Sacramento, California**

Members Present:

Suzanne McCormick, DDS, President
John Bettinger, DDS, Vice President
Stephen Casagrande, DDS, Secretary
William Baker, Public Member
Fran Burton, Public Member
Judith Forsythe, RDA
Rebecca Downing, Public Member
Huong Le, DDS
Thomas Olinger, DDS
Bruce Witcher, DDS

Members Absent:

Luis Dominicus, DDS

Staff Present:

Richard DeCuir, Acting Executive Officer
Nancy Butler, Interim Enforcement Chief
Lori Reis, Complaint & Compliance Unit Manager
Dawn Dill, Licensing & Exam Unit Manager
Sarah Wallace, Administrative Analyst
Donna Kantner, Legislative & Regulatory Analyst
Kristy Schieldge, DCA Senior Staff Counsel
Gregory Salute, Deputy Attorney General

President McCormick called the meeting to order at 10:05 a.m. and established a quorum.

Public Comment

Kevin Keating, a licensed California dentist, spoke to the Board on behalf of the American Association of Endodontists, the California State Association of Endodontists, and as a professor of endodontics at the UC San Francisco School of Dentistry. He informed the Board that these associations have concerns with sections of AB 2637, specifically Business and Professions Code Section 1753.5, pertaining to the cementing of endodontic cones and accessory cones. Dr. Keating presented concerns with the implementation of the law and the potential for public harm. Dr. Keating requested that the Board place his concerns on the November Agenda for further discussion. Dr. McCormick, President, stated that the Board would take it under advisement.

Dean Chalios, California Dental Association (CDA), emphasized that CDA was working closely with the endodontic societies to address the issue that was included in the bill but is being questioned. Mr. Chalios expressed that CDA is looking forward to working together with the endodontic societies and the Dental Board of California to reach a conclusion.

Agenda Item 1: President's Report

Dr. Suzanne McCormick, President, reported that the Executive Officer, Cathleen Poncabare, departed the Dental Board in August. She acknowledged Ms. Poncabare's role through the

transition in going from a Bureau to a Board. Dr. McCormick also reported that Brian Stiger was appointed to the position of Director of the Department of Consumer Affairs on August 11, 2009.

Dr. McCormick reported that the Board granted provisional approval to the Western University of Health Sciences, College of Dental Medicine and she was able to attend the White Coat Ceremony.

Dr. McCormick stated that the California Dental Association (CDA) notified the Board of a clarification required regarding the 8-hour infection control course for AB 2637. She reported that CDA would like to meet with Board staff and the Infection Control subcommittee within the next two weeks in order to facilitate an understanding. Huong Le, DDS, and Judith Forsythe, RDA, will serve on the Infection Control subcommittee.

Dr. McCormick requested that the Board Member Manual be placed on the agenda for the next Board meeting. She suggested establishing a subcommittee to review the Board Member Manual prior to the next meeting.

Dr. McCormick requested that a review of the Dental Assistant Written Exam be placed on the agenda for the next Board meeting. She would like to review the statistics and invite members that facilitate the exam to give an update to the Board.

Agenda Item 2: Acting Executive Officer's Report

Richard DeCuir reported that the Department of Consumer Affairs has proposed a new enforcement model to be rolled out to the 18 Healing Arts Board throughout DCA. The new enforcement model requires budget drills to look at current staffing and case-loads in order to evaluate the need for additional staffing. All of the Boards are operating under tight timeframes to report the needed information back to DCA. The new model also proposes using sworn and non-sworn investigators, eliminating the diversion programs, and modifying and streamlining the Attorney General's processing of cases. The overall goal of the new model is to process cases within 12 to 18 months.

Mr. DeCuir also reported that he met with Dr. McCormick and Dr. Bettinger, as well as Board staff to review the internal structure and process of the Dental Board's enforcement and complaint process. He had an interview with the LA Times involving the Department of Consumer Affairs, State and Consumer Services Agency, the Pharmacy Board, and the Board of Behavioral Sciences. The article had not been published by the time of the meeting. Mr. DeCuir reported that he testified at the Senate Business and Professions Committee regarding the enforcement program and had met with Director Stiger once he was appointed. Mr. DeCuir issued a memo to the Dental Board staff at the end of August informing them that alternate work week schedules would be cancelled effective October 2009 until the end of the mandatory furloughs.

Mr. DeCuir attended Diversion Evaluation Committee meetings at the beginning of September and he has been working with other DCA personnel to develop standardized criteria mandated by SB 1441 by December 31st. He had an entrance conference for the internal audit of the Dental Board's Diversion program and he will be scheduling a follow-up meeting in the next couple of weeks.

He reported that seventy letters were mailed out to licensing examiners to solicit consultants for the Dental Board. Mr. DeCuir temporarily suspended Dental Board outreach efforts in order to focus more on complaints and the enforcement process.

Mr. DeCuir stated that the Board is currently advertising for a SSMI position to oversee the Registered Dental Assistant Program, and IT analyst, and a Supervising Investigator for the Tustin office. DCA has requested that the Board's exercise a 15% reduction in spending on contracts, purchasing, and vehicles.

Agenda Item 3: Board Member Roles, Responsibilities, and Expectations

This item was tabled and will be placed on the agenda for the next Dental Board meeting. The Board Member Administrative Manual will be agendized at the next meeting. M/S/C (Baker/Bettinger) to table the agenda item until the next Board meeting. The motion passed unanimously.

Agenda Item 4: Presentation by the Department of Consumer Affairs' Office of Human Resources Regarding the Selection and Recruitment Process for the Executive Officer of the Dental Board of California

Liz Vierra, Classification and Pay Manager, and Reba Dillon, Classification and Pay Analyst, from the Department of Consumer Affairs' Office of Human Resources presented the process of selecting and recruiting an Executive Officer to the Board.

Ms. Vierra and Ms. Dillon informed the Board that the duty statement of the Executive Officer would need to be reviewed by the Board. After the Board reviews and possibly revises the duty statement, the Office of Human Resources will advertise for the position, collect applications, and screen applicants. Once the duty statement is finalized, it will be posted to the State Personnel Board's website and advertisement locations will be determined by the Board. The position should be posted for at least thirty days.

Human Resources will advertise for the Executive Officer position based upon the Board recommendations. Dr. McCormick directed the Board members to collect their suggested advertising locations and submit them to Human Resources no later than Friday, September 25th.

The Board will need to appoint two members to the Executive Officer Selection Committee to screen the applicants to be brought forth to the full Board. The Human Resources staff will work with the two-person selection committee to assist in the screening process. The selection committee will act on behalf of the Board to accept and screen applications. They will present three to five top candidates for interviews with the full Board.

The Office of Human Resources can provide sample interview questions to the Board, or they can develop specific questions. The same questions must be asked of all applicants interviewing. The questions will need to be submitted prior to the interviews to ensure legality.

Agenda Item 5: Discussion and Possible Action Regarding the Selection and Recruitment Process of the Executive Officer of the Dental Board of California

The Board nominated two members to serve on the Executive Officer Selection Committee.

M/S/C (Bettinger/Casagrande) to nominate Bruce Witcher, DDS, to the Executive Officer Selection Committee. The motion passed unanimously.

M/S/C (Casagrande/Burton) to nominate William Baker, Public Member, to the Executive Officer Selection Committee. The motion passed unanimously.

The Board will need to submit suggested places to post the advertisement for Executive Officer to the Office of Human Resources by September 25th. Candidates who applied for the Interim Executive Officer position will need to reapply for the Executive Officer vacancy.

Agenda Item 6: Review and Possible Action to Revise the Duty Statement of the Executive Officer of the Dental Board of California

The Board worked with the staff from the Office of Human Resources to revise the current duty statement of the Executive Officer of the Dental Board of California. The Board made the following changes to the duty statement:

- The Board revised the program management responsibilities to include diversion. The specific responsibility is now listed as “Program Management – Licensing, Enforcement, Diversion, and Examinations”. The responsibility is expected to take 40% of the Executive Officer’s time.
- The Board removed the responsibility of “Serves as an active member on the Task Force for Culturally and Linguistically Competent Physicians and Dentists” under Program Management unless required by law.
- The Board revised the time commitment of the Administration and Managerial responsibility to 25% from 30% and added the following language: “Ensure compliance with State employee laws and practices.”
- The Board revised the time commitment of the Legislation and Regulations responsibility to 25% from 20%
- The Board made no changes to the Public Contact responsibility.

M/S/C (Burton/Olinger) to adopt the changes as made to the Duty Statement of the Executive Officer of the Dental Board of California. The motion passed unanimously.

Agenda Item 7: *CLOSED SESSION: Consideration of Appointment of Interim Executive Officer

The Board met in closed session from 11:00 a.m. to 2:30 p.m. to consider applicants for the appointment of Interim Executive Officer. The Board offered the position of Interim Executive Officer to Richard DeCuir. Mr. DeCuir accepted the offer and was sworn into office by Dr. Suzanne McCormick, President.

Agenda Item 8(a): Report Regarding the Enforcement Program Review

This item was not discussed.

Agenda Item 8(b): Discussion and Possible Action to Review Existing Enforcement Policies and Accept Staff Recommendations for Revisions:

This item was not discussed.

Agenda Item 8(c): Enforcement Statistics:

Lori Reis, Complaint and Compliance Unit Manager, presented statistics to the Board members regarding the complaint process broken down by month beginning March 2009 and ending August 2009. Ms. Reis explained that if a complaint is closed it means that the complaint was either closed within the Complaint Unit or it was sent to the Investigation Unit and is no longer assigned to the Complaint Unit. A pending case is either waiting for further information to be reviewed or is waiting to be reviewed by an analyst in the Complaint Unit. Ms. Reis reported that there were 714 cases that were 180 days or older. She performs weekly desk audits with her staff to ensure that the oldest cases are reviewed first. The Complaint Unit receives approximately 300 complaints per month and is able to close approximately 250 to 275 complaints per month. There are currently

1,800 to 1,900 cases pending per month. Ms. Reis stated that the current case loads can be attributed to the current workforce issues in the Dental Board related to the furloughs, alternate work week schedules, and absenteeism within the Complaint Unit. The alternate work week schedules have been eliminated effective October 1st. Once the alternate work week schedules have been eliminated and the furloughs have ended, there should be a significant decrease in the amount of cases pending due to the increase in workforce productivity. Ms. Reis hired and is currently training a retired annuitant to help with the complaint process. Mr. DeCuir noted that the Dental Board may be able to secure additional staff with DCA's new enforcement model.

Ms. Reis informed the Board that there is a need for more consultants to review complaints. She reported that there will be an advertisement placed in the Board's newsletter. The Board directed staff to place an advertisement on the Dental Board website and to work with the California Dental Association to recruit dental consultants.

Nancy Butler, Interim Enforcement Chief, presented statistics to the Board members regarding investigations. Ms. Butler reviewed how many investigations her unit receives per month, closes per month, and how many are pending or unassigned per month. There are currently sixteen positions in the Enforcement Unit with three vacancies in the Sacramento office and one vacancy in the Tustin field office. Ms. Butler has conducted three rounds of interviews but has been unsuccessful in finding a qualified candidate to fill the vacancies.

Ms. Butler reported that she will be meeting with Gregory Salute, Deputy Attorney General, to review cases that are currently assigned to investigations. They will determine if the cases need to stay in investigations or if the cases should be closed.

Fran Burton, Board member, requested that staff provide case aging statistics that are reader friendly. Mr. DeCuir stated that staff would present the aging at the next Board meeting.

Dr. McCormick questioned if there was a statutory requirement to make sure licensees submit records requested by the Board. Ms. Reis reported that staff will begin the cite and fine process with non-compliant dentists once a memo has been approved by legal counsel. Ms. Reis stated that the cite and fine process is comprised of two letters being sent to subject dentists. The first letter sent to licensees requests records be received by the Board within 15 business days. If the records are not submitted, then a second letter is sent certified mail requesting that the records be sent within another 15 business days or the licensee will be fined. The entire process can take 30 business days or more. The Board directed staff to consider eliminating the second letter in the interest of time. Mr. DeCuir stated that he would meet with a few of the other Boards in DCA to see how they operate their cite and fine processes and report back to the Board at the next meeting.

Agenda Item 9(a): Diversion Program Statistics

Richard DeCuir reported that the Diversion program statistics had remained unchanged since the last Board meeting in July. The statistics are reported quarterly, and Board staff has not received updated statistics since the last Board meeting.

John Bettinger, DDS, directed staff to provide further detailed Diversion program statistics, including information on cases where the Diversion program has failed. Kristy Schieldge, Legal Counsel, suggested reporting statistics regarding petitions to revoke licenses for failure to comply with Diversion mandates.

Fran Burton, Public Member, suggested that staff provide more information regarding the Diversion program to help the Board members better understand the process. Suzanne McCormick, DDS, directed staff to present a primer on the Diversion Program and how it works at the next Board meeting.

Agenda Item 9(b): Status Report on AB 456 – Diversion Program Legislation

This item was not discussed.

Agenda Item 9(c): Status Report on SB 1441 and Progress of the Substance Abuse Committee

This item was not discussed.

Agenda Item 10: Portfolio Update: Status Report Regarding Hybrid Portfolio Examination Pathway to Qualify for a California Dental License

This item was tabled and will be placed on the agenda for the next Dental Board meeting.

Agenda Item 11: General Anesthesia/Conscious Sedation: Report Regarding the Upcoming General Anesthesia/Conscious Sedation Calibration Courses in the Central Valley, Northern California, and Southern California

This item was tabled and will be placed on the agenda for the next Dental Board meeting.

Agenda Item 12(a): Continuing Education Update: Status Report on the Filing of the Final Rulemaking File for Continuing Education Provider Regulations at Title 16 California Code of Regulations Section 1016 and 1017

Donna Kantner, Legislative & Regulatory Analyst, reported that the final rulemaking file for the continuing education provider regulations will be filed with the Office of Administrative Law by December 31, 2009. The regulations should be in effect by early spring 2010.

Agenda Item 12(b): Continuing Education Update: Continuing Education Random Audit Report

Dawn Dill, Licensing and Exam Unit Manager, reported that non-compliance with the continuing education random audits increased over the last six months. About 20% of the non-compliance is attributed to licensees not meeting the continuing education requirements in basic life support, infection control, and California law.

Dr. McCormick directed staff to provide more detailed statistics pertaining to the continuing education random audit. The Board would like to see actual numbers rather than just percentages. Richard DeCuir stated that staff would provide an expanded database with detailed statistics and a breakdown of deficiencies.

Gregory Salute, Deputy Attorney General, reported that continuing education audits are important to public safety. Licensees practicing without taking the basic continuing education courses can put the public at risk and can lead to cause of complaints.

Agenda Item 13: Legislative Update and Review: Presentation Regarding the Legislative Process and Suggested Timeline

Fran Burton, Public Member, reported that legislative proposals are due to the Department of Consumer Affairs by September 23rd for this legislative session. Ms. Burton suggested waiting until next year to submit a legislative proposal but to begin the process of drafting legislation to be submitted next year. She directed staff to set up a meeting of the Legislative and Regulatory Committee and Board staff to discuss how the Board should track legislation, how the Board and

staff want to participated in the legislative process, and present an update at the next Board meeting.

Richard DeCuir presented SB 294. It is a bill that was amended by the legislature on September 4th to promote enforcement. The bill was written by the Senate Business and Professions Committee. DCA Boards and Bureaus were not consulted by the author. The bill was stalled on September 8th and can be taken up again in January 2010.

Agenda Item 14: Status Update on the Creation of the Dental Assisting Forum

Judith Forsythe, RDA, reported that letters were sent out to interested parties to solicit applicants to be considered for appointment to the Dental Assisting Forum. The letters were sent at the end of August and had a deadline to be returned to the Board by September 15th. The Board only received 10 applications for the 7 vacant positions, with a majority of the applicants being educators. In an effort to have a bigger pool of applicants, the Board will be posting the advertisement to solicit more applicants by Friday, September 18th.

Jeanne Pitman, Executive Director of the Butte Sierra District Dental Society, suggested the Board work with the California Dental Association (CDA) to disseminate the information to the 32 dental component societies around California and possibly post an advertisement on the CDA website.

Katie Dawson, California Dental Hygienist Association, questioned if dentists and Registered Dental Hygienists would be considered for appointment to the Dental Assisting Forum. Dr. McCormick clarified that the intent of the law was to give dental assistants a pathway to have their concerns heard by the Board.

Bill Lewis, California Dental Association, stated that CDA would be interested in assisting in the effort of soliciting applicants to be considered for appointment to the Dental Assisting Forum.

Agenda Item 15: Report Regarding the Production of the Fall 2009 Dental Board Newsletter

There was brief discussion regarding the dates for submission of articles by board members that wished to contribute articles for the Fall 2009 Dental Board Newsletter. It was decided that full discussion and report regarding the status of the Newsletter would be tabled and the matter placed on the agenda for the next Dental Board meeting.

Agenda Item 16: Examination Appeals Committee Report

This item was tabled and will be placed on the agenda for the next Dental Board meeting.

Public Comment

Katie Dawson, California Dental Hygiene Association, requested that the Board place the issue of RDAEF programs where dental assistants are being taught to probe in preparation of packing cord for crown submitting be placed on the agenda.

Closed Session – Disciplinary Matters And Litigation

The Board met in closed session to deliberate on disciplinary matters.

Adjournment

The meeting adjourned at 5:05 p.m.