



**Dental Board of California Meeting
Monday, July 26, 2010
Sacramento, CA**

Members Present:

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

Members Absent:

Staff Present:

Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Kim Trefrey, Enforcement Chief
Dawn Dill, Dental Assisting Unit Manager
Donna Kantner, Licensing & Examination Unit Manager
Jocelyn Campos, Enforcement Coordinator
Karen Fischer, Administrative Analyst
Sarah Wallace, Legislative/Regulatory Analyst
Kristy Schieldge, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

President Bettinger called the meeting to order at 8:10 a.m. Secretary Dominicis called the roll and established a quorum. Dr. Bettinger announced where the restrooms and café were located. He recognized that Board member participation at meetings is a huge commitment and he thanked the Board members for attending the meeting.

AGENDA ITEM 1: Approval of the Full Board Meeting Minutes from May 5-6, 2010.

Rebecca Downing, public member, offered a correction to Item 15: Enforcement Committee Report. The EAR migration will begin on May 15, 2010. Dr. Witcher pointed out a typo on Item 20: WREB Statistics and Update. The last line of the second paragraph, the word "plan" should be "play". M/S/C (McCormick/Downing) to accept the Full Board Meeting Minutes from May 5-6, 2010 as amended. The motion passed unanimously.

AGENDA ITEM 2: President's Report

Dr. Bettinger reported that he attended a two day Western Regional Examination Board (WREB) meeting in Seattle. The Dental Examination Review Committee met on the first day and discussed a few changes to the exam. On day two, the Board of Directors met and voted to move ahead with governance restructuring – creating a two tier system of active and affiliate members. Active members will be required to provide three Examiners to

participate in the examination process. The smaller states objected to this and so an accommodation will be made when revising the by-laws. Dr. Bettinger recognized Dr. Luis Dominicus' participation in and contribution to the work group that pioneered the WREB governance restructuring plan. He went on to report that the overall pass rate for candidates taking the exam for the first time is 85%; second time is 96%. The highest failure rate occurs on the endodontic and operative portions of the examination.

Dr. Bettinger also reported that the Director of the Department of Consumer Affairs has instituted an outreach to Board and Committee Presidents to participate in a monthly teleconference. The purpose of the monthly teleconference is to give Board/Committee Presidents the opportunity to share concerns. The Director encouraged the Boards to move forward with development of regulations relating to the Consumer Protection Enforcement Initiative (CPEI) and SB 1441 Best Practices relating to substance abuse. Other items discussed were the state budget, staff morale, and finally, the Federal Health Care bill. The Federal Health Care bill establishes new pathways to provide medical care. The Director indicated that this legislation will increase the demand for health care coverage. He encouraged Boards to begin looking at submitting budget change proposals for additional staff to assist with increased licensing and enforcement issues that may occur as a result of the implementation of the federal legislation.

AGENDA ITEM 3: Executive Officer's Report

Richard DeCuir, Executive Officer introduced Kim Trefry, the Board's new Enforcement Chief. Kim has 27 years of state service; 18 years with the Department of Parks and Recreation, and nine years with the Division of Investigations, which performs enforcement investigations for all of the Department of Consumer Affairs, except the Dental and Medical Boards. The Board welcomed Kim.

Mr. DeCuir reported that the internal audit of the Board's Diversion program was complete. A copy of the report was distributed to Board members. The audit found the contractor was in full compliance. Mr. DeCuir emphasized that the Board's Diversion Program has been in existence for 27 years with no problems reported.

Mr. DeCuir continued to report that there is no state budget and therefore there is no spending authorization. Travel expense claims will not be paid until a budget is signed. He concluded his report by saying the Board will be hiring 12.5 new enforcement positions – the bulk of which will be non-sworn and sworn investigators in order to bring the complaint/investigations processing times to within 18 months.

Dr. Bettinger acknowledged and welcomed Dr. Alan Felsenfeld who was in the audience. Dr. Felsenfeld is a distinguished professor of Oral and Maxillofacial Surgery at UCLA and the Speaker of the House of the California Dental Association.

AGENDA ITEM 4: Department of Consumer Affairs (DCA) Director's Report

Kim Kirchmeyer, Department of Consumer Affairs (DCA) Liaison to Boards and Bureaus, was introduced. She reported on the Consumer Protection Enforcement Initiative (CPEI) – about getting 140 new positions for the Department's healing arts boards approved as soon as the budget is passed; the Breeze Project, which will update an antiquated state computer system; the Governor's Job Creation Initiative, which is licensing reform that decreases licensing backlogs and will ultimately allow people to get licensed more quickly and out to work; SB 1441, uniform standards relating to substance drug and alcohol abuse; and finally, the Federal Health Care Reform, which will impact state licensing and enforcement. She

encouraged Board members to participate in the Departments Enforcement Training being held in Sacramento on Tuesday, July 27th.

AGENDA ITEM 5: Consideration of and Possible Action Regarding the Adoption of the Updated Dental Board's Strategic Plan.

Karen Fischer, Administrative Analyst, reported that the Dental Board had conducted two strategic planning sessions, facilitated by SOLID staff, at Board meetings which were held February 25, 2010 and May 5, 2010. The Board exercised due diligence in reviewing and revising the mission, vision, and values statements; and goals and objectives were established which will guide staff during the next two years. Dr. Whitcher asked what mechanism was in place to ensure that staff would be able to complete the goals and objectives. Ms. Fischer responded that DCA SOLID staff has offered to meet with Dental Board staff in one year to evaluate whether or not goals and objectives are being met. M/S/C (McCormick/Dominicis) to adopt the 2010-2012 Strategic Plan, effective immediately. The motion passed unanimously.

AGENDA ITEM 6: Update on Enforcement Program Improvements.

Denise Johnson, Assistant Executive Officer reported that she, Kim Trefry, Enforcement Chief, and Richard DeCuir, Executive Officer met in June with Enforcement Committee Chair Rebecca Downing to discuss the progress of the improvements in the enforcement program. Some of the improvements included filling numerous staff vacancies such as the Enforcement Chief; two senior investigators and one investigator in the Orange Enforcement Field Office; one senior investigator in the Sacramento Field Office; and one office technician has been assigned to provide administrative assistance to the enforcement monitor. Additionally, the enforcement program will be receiving three sworn and 7.5 nonsworn positions from the Consumer Protection Enforcement Initiative (CPEI) to perform "quality of care" desk investigations. Committee Chair Downing asked if the process for hiring nonsworn investigators will be lengthy. Ms. Johnson responded that the Department is suggesting that a minimum background check be performed on all nonsworn candidates. This process will not take as much time as a sworn investigator background check would take. Dr. McCormick, Board member, asked for an overview of the number of sworn vs. nonsworn investigators, and a delineation of their duties. Ms. Trefry explained that the new positions are designated as "special" investigators. These people will be used on quality of care cases that don't have a criminal element; and for record gathering. It is estimated that 75% of the cases in enforcement are quality of care, the hope is that utilizing special investigators will speed up the processing times. Dr. McCormick asked whether or not there is an oversight mechanism for reviewing timeframes and severity of cases. Ms. Trefry explained that the cases are tracked in the Consumer Affairs System (CAS) where timeframes are noted and case aging information is available; and two managers, one in each field office, conduct quarterly case reviews with staff. Dr. McCormick asked about a mechanism for calibration of managers, staff, and consultants for investigative case monitoring. Mr. DeCuir responded that currently office policies and procedures are used, and noted that Ms. Trefry will be reviewing those policies and procedures, which have not been updated in a number of years, to determine whether or not changes should be made.

Ms. Trefry went on to report on the enforcement performance measures that were put in place by the Department of Consumer Affairs. Currently the Dental Board does not have an effective way to monitor or measure the amount of time investigators spend on cases. Ms. Trefry is looking into using the Medical Board's Investigative Activity Reporting (IAR) which offers a tracking system closely aligned to the tasks currently performed by both sworn and nonsworn enforcement staff; including inspection and probation functions.

Ms. Trefry reported that the Department has implemented a Consumer Survey program via survey monkey to allow consumers to provide feedback on the level of service they received from the Board. The email link will be provided in letters to complainants at the conclusion of the investigative process. The Department will provide the Board with monthly summary data from collected responses.

In conclusion, Ms. Trefry reported that when she came on board, she reviewed the enforcement staff training and determined that improvements could be made. However, all training is on hold until a budget is signed.

Dr. Casagrande asked about the calibration of the consultants used by the Board to evaluate enforcement cases. Greg Salute, Deputy Attorney General explained that there had been successful training for expert witnesses in the past. However, due to increased case loads, more consultants have been hired and have not yet been trained. Deputy Salute will be working with Ms. Trefry to implement a training program for the consultants. Ms. Downing, Enforcement Chair, commented that she feels Ms. Trefry and Ms. Johnson will work together to improve the reporting, accountability, productivity, and quality of the enforcement program.

AGENDA ITEM 7: Update on Actions Taken to Streamline the Process for Approval of Registered Dental Assisting Infection Control Courses.

Richard DeCuir, Executive Officer reported that he has asked Georgetta Griffith, former Dental Board Executive Officer for 27 years, to assist him in reviewing and revising the Registered Dental Assisting (RDA) infection control course provider application and process in order to increase efficiency and therefore decrease the backlog in process timeframes.

Ms. Griffith outlined how the current system was working and presented a recommendation on how to proceed. Currently, Board staff serves primarily as the conduit between the RDA course provider applicant and a small group of consultants. Applications are received in the Board office, logged, and assigned to a specific consultant. This process inherently is lengthy, as materials are sent from the applicant to Board staff, from Board staff to the consultant, and back again. Her recommendation is to pull the course provider review process back in-house and have Board staff review the application, only bringing in outside consultants to assist staff when needed. This eliminates the need to send documents back and forth. Additionally, Ms. Griffith has revised the infection control course application to standardize how information is submitted; and the staff's internal review document has been revised and parallels the application. This will simplify the review process, but will be comprehensive to ensure compliance with Board regulations.

AGENDA ITEM 8: Consideration of and Possible Action Regarding the Subcommittee's Recommendation to Pursue (A) Regulatory Changes or (B) Statutory Changes Relating to Dental Assisting Duties, and Educational Programs and Courses.

Dr. Bettinger expressed his concern about the Board's statutory limitation to test the competency of RDAEFs relating to certain duties. He states that the Board issues permits to perform certain services, and that the public has the right to assume that someone with this permit is certified by the Board to a minimum competency. He feels that the authority to ascertain competency has been statutorily removed from the Board and transferred to the dentist who hires the license holder. In many cases, an RDAEF placing fillings in a patient's mouth might be performing this service clinically for the first time. Since the Board does not

have the authority to test competency for this duty, the hiring dentist will determine the competency. Is this in the public interest and/or safety?

Drs. Olinger and Dominicis, who were appointed to review these issues, summarized the subcommittee's recommendations:

1. Regulatory changes should be made to state that RDAEFs who are authorized by statute to cement and fit master gutta-percha points should not be authorized to complete the final condensation. The subcommittee agreed that risk of too much or too little force could cause the procedure to fail for numerous reasons. The subcommittee also agreed that the Board has seen disciplinary cases where experienced dentists sometimes have difficulty achieving proper endodontic obturation. It would be a significant danger to the public to have individuals with minimal, non-clinical training attempting this procedure.
2. The subcommittee found that the training defined in current regulations for a RDAEF to place all types of direct dental restorations is inadequate.
3. The subcommittee determined that specific levels of supervision for any given, allowed procedure should be written in regulation. The subcommittee agreed that allowing a dentist to determine the level of supervision for an RDA to receive (general or direct) on most procedures runs the risk of allowing a significantly untrained person to perform procedures in the mouth that could cause harm.

Kristy Schieldge, Legal Counsel, commented that recommendation #1 would need to be changed through legislation and could not be done through the regulatory process.

Dr. Bettinger thanked the subcommittee for its review of these issues. M/S/C (Whitcher/McCormick) to accept the subcommittee's report. The motion passed unanimously.

Public Comment:

Dr. Kevin Keating, Endodontist representing the American Association of Endodontists, and the California State Association of Endodontists has concerns about condensation. He is in support of regulations to allow RDAEFs to cement and fit cones. In the Endodontic world, cementation does not include condensation. Cementation is reversible; condensation is irreversible. He also requested that fitting and cementing obturation based root filling materials not be included in the regulations. Dr. Keating and his Association are trying to mitigate the risk and work with the statute as it stands.

Dr. Joe Schultz, member of the Board of Directors for the American Association of Endodontists expressed concern about the new duties of RDAEFs, however he is encouraged by the subcommittee's recommendations and would support legislation to ensure public safety.

Dr. Alan Felsenfeld, California Dental Association, recognizes the potential problem with the fitting and cementing of master cones, as well as condensation. They recognize the position the statute puts the Dental Board in and agree that fitting and cementation of the master cone is acceptable, but not condensation.

Joan Greenfield, Dental Assisting Alliance, and the RDAEF Association, will work with all associations to ensure the public safety and to resolve issues of concern.

Dr. Guy Acheson, general dentist in private practice in Rancho Cordova, and Treasurer of the California Academy of General Dentistry. Speaking today on behalf of himself, he expressed concern about allowing supervising dentists to decide what level of supervision is needed for each duty performed by an RDA. He feels there is a risk of supervising dentists abusing this authority, which could put the public safety at risk. Additionally, Dr. Acheson has concerns regarding RDAEFs and the duties of placing and finishing direct restorations – a duty in which no clinical experience on a human patient is required; and endodontic obturation by RDAEFs, specifically the sizing, fitting, and cementing of endodontic master cones and accessory points. Dr. Acheson feels that the Board has a duty to ensure the safety of the public. He feels the current statute puts public safety at risk by virtue of requiring no actual clinical practice and testing, and by allowing instruction by instructors who conceivably have no actual human experience. He feels the statute must be changed such that licensees are trained to clinical competence and that the Dental Board can assess, test, and confirm the competence of these new practitioners.

Dr. Earl Johnson, speaking on behalf of himself. The public is being threatened by this statute. The Board needs to go to the legislature to get it changed.

Dr. Bettinger, Board President, stated that he wanted to appoint a new two-person subcommittee, Dr. Whitcher and Rebecca Downing, to work with staff to review the issues addressed by the subcommittee of Drs. Dominicis and Olinger and the public comments heard today, and to bring back suggested statutory and/or regulatory language that addresses all concerns, to the Board sometime in September. Dr. Whitcher commented that he feels there is not enough time to introduce statutory changes this year. He proposed finishing up the regulatory package and suggested focusing on regulatory language to increase the training of certain duties and make some provisions for testing within the programs as the first step to addressing all concerns.

Dr. Suzanne McCormick, Board member asked if it would be appropriate for the Board to send a letter to the author of AB 2637 indicating the problems (public comment) with the legislation. Fran Burton, Board member, likes the idea of trying to engage the author in a dialog about the concerns that have been discussed. She feels the author may consider carrying legislation. Dean Chalios, CDA commented that it is the author's desire that the Dental Board address these concerns through regulations.

M/S/C (McCormick/Forsythe) to approve the appointment of a two-person regulatory subcommittee of Dr. Whitcher and Rebecca Downing, to work with staff to review the issues addressed by the subcommittee of Drs. Dominicis and Olinger and the public comments heard today, and to bring back suggested regulatory language that addresses all concerns, to the Board sometime in September. The motion passed unanimously.

LUNCH BREAK

AGENDA ITEM 9: Discussion and Possible Action to Consider : **(A) Comments Received During the 45- Day Comment Period Relative to Amendments to Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1071, and Proposed Additions to Title 16, CCR, Section 1070.6, 1070.7, 1070.8 for Dental Assisting Educational Programs and Courses, and**

Sarah Wallace, Legislative & Regulatory Analyst, gave background information on this item. She reported that Assembly Bill 2637 was passed by the Legislature and signed into law on September 28, 2008. The provisions of this bill relate to the allowable duties and settings for

dental assistants, Registered Dental Assistants (RDA), Registered Dental Assistants in Extended Functions (RDAEF) and the two new permit categories for Orthodontic Assistant (OA) and Dental Sedation Assistant (DSA) which became law on January 1, 2010. AB 2637 included an expiration date on the sections of law pertaining to educational program and course approvals, with the understanding that regulations would be pursued to clarify specific standards and criteria that these programs and courses must meet to obtain Board approval to teach newly allowed duties and conform to the statutory changes.

The Board adopted proposed regulatory language regarding dental assisting educational programs and courses at the November 2009 meeting. The regulatory language was noticed on the Board's website and mailed on June 4, 2010 for the 45-day comment period. The regulatory hearing was scheduled in Sacramento on July 19, 2010. Comments were accepted until 5pm on July 19, 2010. The Board received comments from the following: Dental Assisting Alliance, Albert Gardi, DDS, the California Dental Association (CDA), the California State Association of Endodontists (CSAE), the California Society of Anesthesiologists (CSA), Dr. Ned L. Nix, DDS – California Association of Oral and Maxillofacial Surgeons (CALAOMS), and the California Association of Dental Assisting Teachers (CADAT). These comments are included in the Board packet. Due to the short time frame between the hearing date (July 19) and the Board meeting (July 26), staff was unable to review the comments and prepare recommendations for the Board to consider at this meeting. M/S/C (Whitcher/McCormick) to direct staff to work with the Subcommittee appointed by the Board and legal to review all comments submitted by July 19th and to return with recommendations for the Board on how to respond to these comments at the next scheduled Board meeting. There was discussion.

Public Comment:

Dr. Lori Gagliardi, CADAT encouraged the Board to broaden the subcommittee to include an RDA. Karen Wyant, Dental Assisting Alliance submitted comments to CADAT's comments that she would like the Board to consider. Kristy Schieldge, Legal Counsel pointed out that only comments received during the 45-day comment period could be considered by the Board. If the Board makes changes to the regulatory language based on the recommendations made by the staff, legal, and the subcommittee at the next scheduled Board meeting, there will be another opportunity for the public to comment on the changes to the regulatory language. Dr. Whitcher, Board member reassured Ms. Wyant that he feels her concerns will be addressed as part of the review of the CADAT comments. Dr. Earl Johnson, California Orthodontic Association, was disappointed that he was limited in the amount of time he was allowed to speak at the hearing in Sacramento on July 19th; and that no Board members were present. Dr. Rick Stafford, California Society of Dental Anesthesiologists (CSDA) commented on the regulations pertaining to the dental sedation assistant. He mentioned that the American Society of Anesthesiologists is in conflict with the California Society of Anesthesiologists. The CSDA was asked by the Dental Board to work with CDA to come to a consensus on the number of hours of training for dental sedation assistants. There is no agreement. CDA is standing by 110 hours of training. CSDA believes that the number of hours of training of dental sedation assistants should be increased. Furthermore, the current level of training is not adequate and is unsafe for the public.

Kristy Schieldge, Legal Counsel, commented that the discussion was getting off track. The Board has a motion before it. It is not to consider comments that were received outside of the record, after July 19th. Staff will work with the Subcommittee and legal to review the comments received during the 45-day comment period and will develop recommendations

for the Board on how to respond to those comments at the next scheduled Board meeting. If there are any changes accepted to the regulatory language, the language will go out for another round of public comment. At that time, Dr. Stafford's organization will have an opportunity to respond.

Kristy Schieldge, Legal Counsel, restated the motion. M/S/C (Whitcher/McCormick) to direct staff to work with the Subcommittee appointed by the Board and legal to review all comments submitted by July 19th and to return with recommendations for the Board on how to respond to these comments at the next scheduled Board meeting. The motion passed unanimously

(B) Adoption of Amendments to Title 16, CCR, Sections 1070, 1070.1, 1070.2, 1071, and Proposed Additions to Title 16, CCR, Section 1070.6, 1070.7, 1070.8 for Dental Assisting Educational Programs and Courses.

This item is deferred until the staff, legal, and the subcommittee have reviewed the comments received during the 45-day comment period and develop recommendations for the Board on how to respond to those comments at the next scheduled Board meeting.

AGENDA ITEM 10: Update Regarding Disciplinary Guidelines, CCR, Title 16, Section 1018.

Sarah Wallace, Legislative & Regulatory Analyst summarized the status of the Disciplinary Guidelines regulatory package. The Board submitted the rulemaking file to the Office of Administrative Law (OAL) on February 4, 2010. OAL disapproved this rulemaking file on May 18, 2010. The proposed language was modified to incorporate the amendments required by OAL for filing. As its May 6, 2010 meeting, the Board adopted modified text to the originally filed language as a result of comments received from OAL in the disapproval letter. The modifications were noticed on the Board's website and mailed on May 18, 2010 for 15-day public comment. The public comment period began on May 19, 2010 and ended on June 3, 2010. No comments were received during the public comment period. Board staff prepared the final rulemaking file and it was resubmitted to OAL on July 15, 2010. OAL has 30 working days to either approve or disapprove the Disciplinary Guidelines rulemaking file.

There was no additional public comment on this agenda item.

AGENDA ITEM 11: Update Regarding Retroactive Fingerprinting Regulations, CCR, Title 16, Section 1007, 1008, and 1017.2.

Sarah Wallace, Legislative & Regulatory Analyst summarized the status of the Retroactive Fingerprinting regulatory package. Board staff prepared the final rulemaking file to submit to the Office of Administrative Law (OAL). The rulemaking file was delivered to the Department of Consumer Affairs for the Director's review on July 9, 2010. The Director has 30 days to review the file. Once the Director reviews the final rulemaking, staff will submit the file to OAL. Once submitted, OAL will have 30 working days to either approve or disapprove the Retroactive Fingerprinting rulemaking file.

Dean Chalios, CDA, again offered the association's assistance with fingerprinting. CDA has two large educational programs, one in May in Anaheim, and one in September in San Francisco. He suggested that the Board set up a mechanism so that licensees can come by the DBC's booth, at either or both of these meetings, and get fingerprinted. CDA wants to make it easy for the dentists.

AGENDA ITEM 12: Consideration of and Possible Action Regarding Acceptance of Commission on Dental Accreditation (CODA) Findings and Delegation of Approval Authority for RDA Programs to the Executive Officer.

Dawn Dill, Manager of the Dental Assisting Unit reported that per the Board's request, she prepared a 17 page side-by-side comparison of California statutory requirements to the Commission on Dental Accreditation (CODA) standards relating to RDA courses. In her report of the history and background surrounding this issue, Ms. Dill pointed out that the Committee on Dental Auxiliaries (COMDA) accepted the findings of CODA until sometime in 2006, when it was determined by staff that CODA accredited programs no longer met California requirements. Ms. Dill summarized her side-by-side comparison by saying that California and CODA requirements for chairside dental assistants (DA) are consistent with each other. However, California requires clinical training and competence in Registered Dental Assistant (RDA) duties as part of the education. CODA requires any state specific duties be taught to a least the level of laboratory/preclinical competence, but not clinical competence. A program in California could be accredited by CODA without meeting all of the California requirements. Therefore, full acceptance of CODA findings in lieu of a California review do not appear to cover the RDA functions specific to California.

Dr. Whitcher, Board member asked for clarification as to whether the Board staff would be conducting an additional site visit of the program, or would staff accept the CODA site visit report in lieu of it's own site visit. Kristy Schieldge, Legal Counsel emphasized that Board staff need to clarify to RDA program applicants that if they submit the CODA site visit report as part of their program approval application, that this information would be public.

Staff recommends that new RDA programs in California with CODA accreditation apply for Board approval by submitting the application, all supporting documents, curriculum, and a copy of the CODA site visit report. This information will be used to verify compliance with California specific requirements. Staff also recommends that the Executive Officer be delegated the authority to approve all RDA programs. M/S/C (Casagrande/Forsythe) to accept the staff recommendations as outlined above. The motion passed unanimously.

Dr. Lori Gagliardi, CADAT commented that she concurs with and fully accepts the staff recommendations.

AGENDA ITEM 13: Consideration of and Possible Action Regarding Recommendations Received From the Dental Hygiene Committee of California (DHCC), and Possible Action to Initiate a Rulemaking to Amend Infection Control Regulations, CCR, Title 16, Section 1005.

Dr. Huong Le, Board member and Co-chair of the Infection Control subcommittee led the discussion regarding the recommendations received from the Dental Hygiene Committee of California (DHCC). She explained the two attachments in the packet: Attachment A was DHCC's proposed language for CCR Section 1005 pertaining to the minimum standards for infection control. The document contains single-underline, single-strikeout formatting, but has included the DHCC's proposed changes within the text accepted by the Board in May 2010.

Attachment B reflects changes made by Dr. Le and Judith Forsythe, the Board's Subcommittee on Infection Control, after a review of the DHCC's recommendations. For purposes of discussion today, Dr. Le worked from Attachment B and walked through the suggested changes:

Page 2, item 13, first line - the word “professional” is changed to “personnel” to be consistent with other sections of the document.

Page 3, item 2 – added the line “The protocol shall be made available to all DHP at the dental office.” to the end of the paragraph. The change is suggested as good management practice.

Page 3, item 5 – strike out “Protective attire”, add “All PPE used during patient care shall”, and strike out “must”. These changes are made for consistency and as a better description.

Page 4, item 9 – strike out the line “Sterile surgeon’s gloves shall be worn when performing oral surgical procedures.” because the phrase “oral surgical procedures” is not defined, and there is no scientific evidence to support this.

Page 6, item (d) – Dr. Le had changed the word “annually” to “biannually”, but later determined that statute requires an annual review. Keep the word “annually”.

Public Comment:

Dr. Lori Gagliardi, CADAT, asked for clarification on page 3, item 5 regarding whether protective clothing needed to be removed when going to get a patient. Dr. Le replied no.

Dr. Earl Johnson, Orthodontic Association, said that all regulations need to be concise and clear. He feel there are a number of areas in this proposed language that are unclear. He asked for clarification of the term “droplet nuclei” on page 3, item 4. Miriam DeLaRoi, representing the DHCC responded that the language was taken from CBC language and refers to something very, very small. Dr. Johnson questioned the use of the word “shall” instead of the word “must” on page 3, item 5. He commented about item 9 on page 4 – if doing surgery, need to use sterile surgical gloves. Dr. Le commented that “oral surgical procedures” is not clearly defined. Dr. Johnson feels that item 11 on page 4 is confusing because it describes wrapping something that is submerged in liquid for disinfection. He also questioned what the word “packaged” means on page 5, item 12.

LaDonna Drury Klein, CADAT clarified the intent of item 11 on page 4.

Dr. Guy Acheson, general dentist in private practice in Rancho Cordova, asked the Board to consider removing housekeeping duties from the requirement to wear gowns, since most facilities are using wipes instead of aerosol sprays for disinfection. He also agrees with Dr. Johnson’s comments about the sterilization and disinfection language on page 4, item 11. He feels the language is mixing heat sensitive items with items that can be sterilized. In his view, sterilization and high level disinfection are two difference processes and the language contradicts itself.

Dr. Kit Neasy, California Society of Periodontists, commented on the use of heavy duty utility gloves, as referenced on page 4, item 8. She audits for three insurance companies and has been in hundreds of dental offices. She sees utility gloves on the sink. She has not seen utility gloves worn to clean instruments. She feels that the regulations do not reflect the reality of what goes on in dental offices.

Joan Greenfield, Dental Assisting Alliance requested that the Board keep the language about utility gloves in the regulation. She feels that it is very important. Her program issues two pairs of utility gloves to the students who go out for externships.

M/S/C (Olinger/McCormick) to accept the infection control language presented by Dr. Le in Attachment B, with the one change on page 6, item (d) relating to an annual rather than a biannual review of the regulations. The motion passed unanimously.

M/S/C (Olinger/Burton) to direct staff to take all steps necessary to initiate the formal rulemaking process, authorize the Executive Officer to make any non-substantive changes to the rulemaking package, and set the proposed regulations for a public hearing. The motion passed unanimously.

AGENDA ITEM 14: Consideration of and Possible Action Regarding the Appointment of a Subcommittee to Review the Guidelines from the American Dental Association Relating to Use of Conscious Sedation, Use of Oral Conscious Sedation for Pediatrics Patients, and Use of Oral Conscious Sedation for Adult Patients to Determine if Statutory Amendments are Necessary.

Dr. Witcher, Board member, reported that in October 2007, the American Dental Association (ADA) House of Delegates adopted the "Guidelines for the Use of Sedation and General Anesthesia by Dentists". There are changes in terminology to conform with currently used definitions for general anesthesia, deep sedation, moderate sedation, and minimal sedation. Currently the terms used are general anesthesia and conscious sedation or oral conscious sedation. The idea is to bring the Board's statutes and regulations into conformity with contemporary definitions. Dr. Witcher preliminarily reviewed the documentation and believes conformity would require statutory and regulatory changes.

Dr. Paul Reggiardo, California Society of Pediatric Dentistry, commented that when the subcommittee reviews and compares the ADA Guidelines to current California statutes and regulations, please also consider the American Academy of Pediatrics (AAP) and the American Academy of Pediatric Dentists (AAPD) joint guidelines as referenced in the ADA Guidelines, page 10, item 7 relating to Management of Children.

M/S/C (Burton/Forsythe) to appoint Drs. Le and Witcher as a two-person subcommittee to review the ADA "Guidelines for the Use of Sedation and General Anesthesia by Dentists" and the current statutes and/or regulations governing the use of conscious sedation and oral conscious sedation, and bring recommendations for amendments to the November Board meeting. The motion passed unanimously.

AGENDA ITEM 15: Consideration of and Possible Action Regarding Proposed Regulations to Implement the Department of Consumer Affairs Recommendations to Strengthen Enforcement Programs Pursuant to the Consumer Protection Enforcement Initiative (CPEI).

Kristy Schieldge, Legal Counsel, led the discussion. She indicated that staff had come up with proposals for regulatory changes to implement the Department of Consumer Affairs' (DCA's) suggestions for strengthening the enforcement program. She emphasized that the Board should consider this an opportunity to look at whether or not the enforcement program needs strengthening, based on the review of dental practices and the Dental Practice Act. The Board should have a policy discussion about whether or not the profession and/or the Dental Practice Act would benefit from these proposed changes. Staff presented four policy revisions that were considered by the Board.

Policy Revision #1: Executive Officer Delegation. There was a lengthy discussion among Board members about whether or not the Board should delegate authority to the Executive Officer regarding stipulated settlements to revoke or surrender a license. Kristy Schieldge,

Legal Counsel, expressed concern about delegating authority to the person who charged the licensee with the accusation, and then having to decide what the penalty should be. Dr. Dominicis would like the Board to maintain the authority to decide these cases. Most Board members agreed that they did not want to give up this authority. Dr. Whitcher mentioned that it would be helpful to have statistics that show how many cases fall into this category per year and how much time it would save in the enforcement process to delegate this authority to the Executive Officer. Kim Kirchmeyer, DCA Liaison, commented that the delegation of authority would only take place when there is agreement between the parties involved that a license would be revoked or surrendered. M/S/C (Buton/Dominicis) to reject Policy Revision #1 relating to Board delegation of authority to the Executive Officer regarding stipulated settlements to revoke or surrender a license. The motion passed on a vote of seven ayes, 2 nays.

Policy Revision #2: Revocation for Sexual Misconduct. Ms. Schieldge explained that this policy revision would require an Administrative Law Judge (ALJ) who has issued a decision finding that a licensee engaged in any act of sexual contact with a patient or who has committed or been convicted of sexual misconduct to order revocation which may not be stayed. The Board would then have to decide whether or not to accept or reject the ALJ decision. Board member Rebecca Downing felt that this suggested revision was too broad and too harsh. Other Board members agreed. M/S/C (Burton/McCormick) to table Policy Revision #2 because it is too vague. The motion passed unanimously.

Policy Revision #3: Unprofessional Conduct. There are three parts to this policy revision. Part A deals with confidentiality agreements regarding settlements. The Board, as a whole, rejected this. Part B deals with failure to provide information or cooperate in an investigation. The Board, as a whole, agreed that this is necessary. Part C deals with failure to report an arrest, conviction, etc. was taken in four parts. After much discussion, Board members agreed to policy change C1, C3, and C4 and to reject C2 relating to the arrest of the licensee. In summary, the Board agreed to move forward with regulations relating to subdivision 1018.5 (b), (c1), (c3) with more specific language to define "conviction" which is consistent with past practice for applicants reporting convictions, and (c4). M/S/C (Whitcher/McCormick) to direct staff to work with legal to draft language taking all the comments made today into consideration, and to bring the language back to the Board at its November meeting. The motion passed with a vote of 9 ayes to 1 nay.

Policy Revision #4: Applicant Psychological or Medical Evaluation. M/S/C (McCormick/Forsythe) to table this discussion until the November meeting. The motion passed unanimously.

AGENDA ITEM 16: Status Update Regarding the Uniform Standards Developed by the Substance Abuse Coordination Committee.

Denise Johnson, Assistant Executive Officer updated the Board on the sixteen uniform standards developed by the Substance Abuse Coordination Committee (SACC). DCA Executive office asked the Board consider what is needed to implement the standards through regulations. Legal counsel advised the Board to wait to receive the final recommendations of the SACC, with the understanding that the SACC would be meeting in June. The June meeting of the SACC was cancelled and has been rescheduled for August 4, 2010. The Board previously unanimously passed a motion for legal counsel to work with staff to explore the final recommendations of the SACC and determine which recommendations could be implemented through regulations and/or policy. Staff will meet

with legal counsel to discuss rulemaking options once the SACC's recommended uniform standards are complete and finalized.

AGENDA ITEM 17: Portfolio Pathway to Licensure Update.

Dr. Casagrande, Board member, reported that Assembly Bill 1524 (Hayashi) is Board sponsored legislation for the Portfolio Examination. The bill authorizes the Board to conduct a portfolio licensure examination for graduates of California dental schools. If enacted, this legislation would authorize an approach to licensure currently not used in any other state.

The bill was amended on June 29th in the Senate and now contains provisions that the portfolio examination cannot be conducted until the Board adopts regulations for implementation. The bill has been referred to the Senate Committee on Appropriations. Staff expects the bill to be heard by the Committee in early August and will continue to monitor progress.

AGENDA ITEM 18: Consideration and Possible Action on Recommendations for Approval of Registered Dental Assisting Programs: Carrington College California, Stockton (Full Approval); Carrington College California, Emeryville (Provisional Approval); American Career College, Ontario (Provisional Approval).

Dawn Dill, Manager of the Dental Assisting Unit reported that Board staff and consultants had reviewed the curriculum of the Registered Dental Assistant Program applications listed above and were requesting approval be granted. M/S/C (Dominicis/Forsythe) to approve Registered Dental Assisting Programs: Carrington College California, Stockton (Full Approval); Carrington College California, Emeryville (Provisional Approval); American Career College, Ontario (Provisional Approval). The motion passed unanimously.

AGENDA ITEM 19: CLOSED SESSION - Deliberate and Take Action on Applications for Issuance of New Licenses to Replace Cancelled Licenses.

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

RETURN TO OPEN SESSION

AGENDA ITEM 20: Report of the Licensing, Certification, & Permits Committee.

Dr. Whitcher, Chair of the Licensing, Certification, & Permits Committee reported that the Committee met, roll was called and a quorum was established. Four applications for issuance of new licenses to replace cancelled licenses were reviewed and discussed. The Committee voted unanimously to recommend the Board issue new licenses to replace the cancelled licenses. M/S/C (Bettinger/McCormick) to accept the Committee's report and recommendations. The motion passed unanimously.

Brian Stiger, Director of the Department of Consumer Affairs, welcomed the Board to Sacramento and apologized for not having been at the meeting earlier.

AGENDA ITEM 21: CLOSED SESSION – Deliberate and Take Action on Disciplinary Matters.

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

RETURN TO OPEN SESSION

PUBLIC COMMENT

There was no additional public comment.

ADJOURNMENT

The meeting adjourned at 5:30 p.m.