

DENTAL BOARD OF CALIFORNIA

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



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

Friday, November 5, 2010

Embassy Suites LAX/South
1440 E. Imperial Avenue
El Segundo, CA 90245
1-310-640-3600

Members Present:

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

Members Absent:

Stephen Casagrande, DDS

Staff Present:

Richard DeCuir, Executive Officer
Denise Johnson, Assistant Executive Officer
Donna Kantner, Licensing & Examination Unit Manager
Lori Reis, Complaint & Compliance Manager
Kim A. Trefry, Enforcement Chief
Jocelyn Campos, Enforcement Coordinator
Karen Fischer, Administrative Analyst
Sarah Wallace, Legislative/Regulatory Analyst
Linda Byers, Executive Assistant
Kristy Shellans, 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 thanked all the Board members for taking time away from their families, loved one's and work to be here to serve the Board. Dr. Bettinger recognized Dr. William Langstaff, President of the California Academy of General Dentistry.

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

M/S/C (Witcher/Dominicis) to accept the minutes. The motion passed with Dr. Le, Dr. Morrow, and Mr. Afriat abstaining.

Approval of the Full Board Meeting Minutes from September 16, 2010

M/S/C (Afriat/McCormick) to accept the minutes. The motion passed unanimously.

AGENDA ITEM 2:President's Report

This is the first Dental Board Meeting in California to be web cast live. Future meetings should be retrievable from archive on our website. Openness allows the public to see how we work on the many issues before us. Statutes created last minute without collaboration, can result in increased costs and more time required to formulate regulations. Ideally, private groups, foundations, professional associations and organizations who influence public policy would function with equal transparency. Our Dental Board welcomes stakeholder opinions on policy issues. We thank those who come to our meetings to give their opinions.

Thank you to all who collaborated to make the new Portfolio Pathway to Licensure in California a reality. Recognition goes to the Dental Schools in California, Dental Board members, Staff and the California Dental Association.

AGENDA ITEM 3:Executive Officer's Report

Richard DeCuir, Executive Officer, advised that all materials relating to the Board Meetings can now be accessed on our website. Mr. DeCuir encourages everyone to sign up on the website to receive notifications of future Board Meetings, and all pertinent materials. CPEI is the primary fix for long investigation times. The positions are still frozen due to the hiring freeze but as soon as they are lifted we are ready to move. M/S/C (Afriat/McCormick) to accept the Executive Officer's report. The motion passed unanimously.

AGENDA ITEM 4:Update on Dental Hygiene Committee of California (DHCC) Activities

Lori Hubble and Cathy DiFrancesco reported that the Dental Hygiene Committee of California (DHCC) has completed its strategic plans. DHCC feels that it is a high priority to build a solid infrastructure which includes collaboration with the Dental Board of California. Dr. Olinger requested that the DHCC minutes and exams be included on the Dental Board's agenda.

AGENDA ITEM 5:Budget Reports: Dental Fund & Dental Assisting Fund

Richard DeCuir, Executive Officer reported that for the current fiscal year (FY 10/11) total combined expenditure authorization, from both the Dentistry Fund, and the Dental Assisting Fund, is \$12.892 million; \$11.159 million from the Dentistry Fund and \$1.733 million from the Dental Assisting Fund. Current law does not provide for the comingling of funds, so the Dentistry fund and Dental Assisting fund are two separate reports. Due to the lengthy budget impasse, we only recently received authorization to resume purchasing, so we have no current expenditure report to submit. The breakdown of each fund activity is:

DENTAL: For the prior fiscal year (FY 09/10) the Board budget was reduced to \$9.541 million due primarily to furlough salary savings, followed by an additional 5% salary savings. Board expenditures were less than anticipated giving us a \$1.8 million reversion. The under expenditure is largely attributed to salary savings due to a high vacancy rate during the fiscal year, in addition to less than anticipated costs to the Attorney General's Office, and the Office of Administrative Hearing. We also realized substantial savings in examinations; however, we anticipate a significant increase in expenditures for all these areas, this fiscal year, as we implement the Consumer Protection Enforcement Initiative (CPEI), and the Portfolio examination. For the current fiscal year, there were no furlough adjustments, so we begin with our full authorization of \$10.164 million. That amount is augmented by roughly \$1 million for CPEI, increasing the Board's expenditure authorization to \$11.159 million for FY 10/11.

DENTAL ASSISTING: For fiscal year 09/10, the Dental Assisting Program started the year with an expenditure authorization of \$1.715 million. After expenditures they reverted \$439,000 back

to our Dental Assisting fund. For the current fiscal year (FY 10/11) the Dental Assisting fund begins with an expenditure authorization of \$1.733 million. The increase is attributed to their portion of CPEI funding.

AGENDA ITEM 6: Subcommittee Report on Office of Statewide Health Planning and Development (OSHDP) Health Workforce Pilot Project (WWPP#172) Application Relating to Training Current Allied Dental Personnel for New Duties in Community Settings.

At the September 16, 2010 Board meeting, Dr. Bettinger appointed Dr. Steven Morrow and Judith Forsythe, RDA, to a subcommittee to meet with Dr. Paul Glassman, Project Director, for the Office of Statewide Health Planning and Development (OSHDP) Health Workforce Pilot Project (WWPP#172) to discuss the Board's concerns relating to this project. Dr. Morrow reported that following that meeting, Dr. Glassman informed the subcommittee that the guidelines for placing ITR are: they will be done under general supervision, the training will be conducted at UOP for 9-10 trainees for a period of 3 days. An onsite assessment will be done on the first 5(five) ITR's placed by the trainee's. An electronic assessment will be sent to UOP on the first 50(fifty) ITR's placed by these trainee's. Collaborating dentist's are local, available electronically and available 24/7 for post treatment care if needed. Dr. Dominicis felt that 3 days of training is inadequate and with no anesthesia there will be pain. Dr. Morrow stated that the ITR procedure is recommended and approved by Pediatric Dentists. He stated that 30% of countries worldwide use this procedure. Dr. Morrow felt that the discussion should not be about the procedure itself but who does it. Dr. Olinger was concerned about already nervous kids being harmed more. Dr. Morrow reported that the literature states that only 20%-30% of the patients who receive this treatment report discomfort. He reminded the Board that there will be no teaching or use of rotary instruments and to be clear the IRT differs from the ART in that it is temporary. He felt that Pilot Studies are a good road to identify if new techniques will work. Dr. Bettinger was still concerned for the child's well being. Ms. Forsythe informed the Board that she discussed post treatment options with Dr. Glassman who assured her that local dentists, auxiliary, and Dr. Glassman himself will be available for post treatment care if needed. Dr. Morrow continued that the new consent form will be modified to disclose that there may be pain and that they can refuse treatment. Dr. McCormick asked if there was any other care available. Dr. Morrow answered that there are no dentists available on site and that this is the only restorative procedure that these auxiliaries are allowed to do. Dr. McCormick asked what the method is for contacting Dr. Glassman's group to voice the concerns of the Board. Dr. Bettinger wanted to gather the Board's concerns and send another letter to Dr. Carlyle. Dr. Olinger asked if the patient is told about interim treatment in other words how long to expect this temporary treatment to last. Dr. Morrow said that it is disclosed that the restoration is temporary and must be replaced by a permanent filling eventually. Dr. Morrow addressed Dr. Dominicis' concern about the 3 days of training by saying that the trainee must show competency before being allowed to practice on patients. Dr. Morrow wanted to make it clear that the ADA House of Delegates is opposed to mid-level providers. He reminded the Board that OSHDP has the ability to go forward without our approval but that Dr. Glassman listens to the Board. He stated that the Pilot study should indicate whether or not this is a viable option. Dr. Dominicis reiterated that full disclosure is his main concern, no sugar coating. M/S/C (Whitcher/Dominicis) to delegate authority to Dr. Bettinger to write a letter on behalf of the Board, voicing their concerns about this project, to Dr. Carlyle. The motion passed unanimously. Katie Dawson, CDHA, publicly commented that the history of Pilot Projects shows that the initial concerns and questions will be found out through the study. She hoped that we would rely on science and not personal history. CDHA supports the Pilot Project.

Earl Johnson, DDS, stated that in his opinion this is a good idea. He agreed that disclosure is paramount and he felt that the Board should make recommendations as to what should and should not be done.

AGENDA ITEM 7:Discussion and Possible Action Regarding the Need to Review and Update the Dental Restorative Materials Fact Sheet

Dr. Bettinger reported that the Dental Restorative Materials Fact Sheet has not been revised since 2004. There are new materials being used. He will appoint a subcommittee of Dr Morrow and Dr. Dominicis to review and decide if revisions are needed. M/S/C(Morrow/McCormick) to appoint a 2-person subcommittee to review and recommend whether any changes are necessary to the Dental Restorative Materials Fact Sheet. The motion passed unanimously. Anita Vasquez, Consumers for Dental Choice, publicly commented by reading a statement warning about the risks of mercury in amalgam. She felt every patient should know the risks of the materials used on them.

AGENDA ITEM 8:Examination Committee Report

Dr. Le chaired the meeting in Dr. Casagrande's absence. She reported that a quorum was established and the meeting minutes of May 5, 2010 were accepted. The committee reviewed the RDA examination statistics. The low pass rate was discussed. The calendar for upcoming examinations was reviewed. There is a concern about the lack of facilities available for RDA exams. The Examination Committee voted to recommend to the Board, that all applicants in this packet be approved and sent to WREB pending review by staff for any disciplinary actions. M/S/C (Afriat/McCormick) to accept the Examination Committee report. The motion passed unanimously.

AGENDA ITEM 9:Dental Assisting Committee Report

Judy Forsythe, Committee Chair, reported that a quorum was established and the meeting minutes of May 5, 2010 were accepted. Richard DeCuir, Executive Officer gave an overview of the changes that are being made to the process for course approvals. The average length of time for course approvals has gone from 7.5 months to complete a review to approximately 30-45 days. Per request, the staff agreed to provide the Committee with a list of approved, pending, withdrawn and denied courses at each Board meeting. M/S/C (Whitcher/Olinger) to accept the Dental Assisting Committee report. The motion passed unanimously.

AGENDA ITEM 10:Licensing, Certification & Permits Committee Report

Dr. Whitcher, Committee Chair, reported that a quorum was established and the meeting minutes of May 5, 2010 were accepted. The Committee reviewed the Statistics for Dental, RDA and RDAEF Licensure and Permits and General Anesthesia/Conscious Sedation Permit Evaluations. In closed session the Committee reviewed and denied the replacement of the cancelled license based on the fact that it has been more than 5 years since the license was cancelled. M/S/C (Dominicis/Afriat) to accept the Committee's findings to deny the replacement of the cancelled license. The motion passed unanimously.

The Committee reviewed and denied the request for a conscious sedation permit citing the applicant's failure of the last two evaluations including failure to call 911 for an emergency. M/S/C (Afriat/Burton) to accept the Committee's findings to deny the request for a Conscious Sedation Permit. The motion passed unanimously.

M/S/C (Afriat/Dominicis) to adopt the committee's report. The motion passed unanimously.

AGENDA ITEM 11:Enforcement Committee Report

Rebecca Downing, Committee Chair, reported that a quorum was established and the meeting minutes of May 5, 2010 were accepted. Some of the improvements in the Enforcement Program include the ongoing pursuit to fill the 3 vacant positions. Improvements in the Complaint and Compliance Unit

statistics include an average of 134 days to close a complaint which shows a 54% decrease in time. The new contract for Probation Monitoring Drug testing appears to be very effective, freeing up staff. Diversion statistics showed there were no intakes in July and August, 2 in September. Alcohol and amphetamines appear to be the most commonly abused. The impact of SB 1172 on the Board's Diversion Program and Probation Programs was also addressed. M/S/C (Burton/Whitcher) to adopt the Committee's report. The motion passed unanimously.

AGENDA ITEM 12:Legislative and Regulatory Committee Report

Fran Burton, Committee Chair, reported that a quorum was established and the meeting minutes of May 5, 2010 were accepted. The 2011 Legislative calendar is not available yet. A summary of the end of the 2-year Legislative Session was reviewed. There was an update of the pending Regulatory packages. There were no new Legislative Proposals. The Committee recommends that priority be given to these Regulatory packages, in this order:

1. Consumer Protection Enforcement Initiative (CPEI)
2. Portfolio
3. SB 1441 and 1172
4. Revise current Regulations for Use of Conscious Sedation, Use of Oral Conscious Sedation for Pediatric Patients , and Use of Oral Conscious Sedation for Adult Patients.

M/S/C (Burton/Afriat) to accept Committee's recommendation for 2011 priorities. The motion passed unanimously. M/S/C (Afriat McCormick) to adopt the Committee's report. The motion passed unanimously.

AGENDA ITEM 13:Discussion and Possible Action to Recommend the Initiation of a Rulemaking to Implement the Portfolio Licensure Examination for Dentists (AB 1524, Stats 2010 ch 446)

Dr. Bettinger appointed Dr.'s Casagrande and Morrow to a subcommittee to assist Kristy Shellans and Sarah Wallace with the Board's regulatory package for Portfolio. Refer back to staff and subcommittee to clarify areas of concern.

M/S/C (Whitcher/McCormick) to adopt the Committee's report. The motion passed unanimously. William Langstaff, CAGD, and Bill Lewis, CDA commended the Board and offered their services to help expedite this project.

Agenda Item 14: Reconsideration 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) – SB1111

In May, 2010, the Department of Consumer Affairs (DCA) directed the Board to work on regulatory changes for items that DCA thought needed to be strengthened in the Enforcement Program. Legal counsel and staff prepared policy revisions which the Board reviewed and acted upon in July. Based on the Board's actions, staff revised the proposed policy revisions and asked the Board to reconsider with the new changes. Policy Revision 1 relates to delegation of authority to the Executive Officer. After reconsideration the Board decided to make no changes to their original decision to reject Policy Revision 1.

Policy Revision 2 relates to revocation of a license for sexual misconduct. M/S/C (Olinger/Dominicis) to reject Policy Revision 2. The suggested revision is too vague. The Board would like to continue with the existing regulations as they are consistent with the intent. The motion passed unanimously.

M/S (Whitcher/Afriat) to reconsider Policy Revision 2. 4(four) in favor, 5(five) opposed. The motion failed. The first motion stands.

Policy Revision 3(a) relates to unprofessional conduct as it pertains to providing records requested by the board in a timely manner. M/S/C (Whitcher/McCormick) to accept the changes to subsection(a). The motion passed unanimously.

Policy Revision 3(b) relates to a licensee's failure to report certain disciplinary and legal actions to the Board in a timely manner. M/S/C (Dominicis/Afriat) to accept the changes to subsection (b) with the change to add the word "professional" before the word licensing in subdivision (3). The motion passed unanimously.

Policy Revision 4 relates to the Psychological or Medical evaluation of an applicant or licensee. M/S/C (Morrow/Olinger) to accept the revisions to Policy 4. The motion passed unanimously.

M/S/C (Afriat/Forsythe) 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 15: Discussion and Possible Action to Implement DCA's Recommendations of the Substance Abuse Coordination Committee, Pursuant to SB 1441 for the Board's Diversion and Probation Monitoring Programs

Lori Reis, Manager, Dental Board of California reports that SB 1441 (Chapter 548, Statutes of 2008) was authored by Senator Ridley-Thomas, Chair of the Senate Business, Professions and Economic Development Committee. SB 1441 created the Substance Abuse Coordination Committee (SACC), which will be comprised of the Executive Officers of the department's healing arts licensing boards, as specified, and a designee of the State Department of Alcohol Drug Programs. The bill requires the committee to formulate, by January 1, 2011, to compile uniform and specific standards in specified areas, which each healing arts board would be required to use in dealing with substance-abusing licensees.

Kristy Shellans, Senior Staff Counsel for the Dental Board (Board) provided an analysis of the proposed SB 1441 standards as they apply to the Board's Diversion Program. She stated that the recommended changes can be implemented via contract change, regulation change, or statutory change. This information was presented for information and action when appropriate. Dr. Bettinger asked Steve Afriat to be the diversion liaison and charged him with the task of reviewing and reporting back to the Board.

AGENDA ITEM 16: Subcommittee's Report Regarding the Review of 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. Whitcher 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". Currently, the Dental Board of California governs the use of conscious sedation and oral conscious sedation through Business and Professions Code Sections 1647 to 1647.26.

Dr. Witcher and Dr. Le, the two-member subcommittee charged with the task of reviewing 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 gave a comprehensive report to the Board which showed that a review of California's sedation and anesthesia laws is consistent with the strategic plan and provides an opportunity for the Dental Board to adopt nationally recognized standards. New techniques and technology have become available since the 2006 revision. An update would allow revision for any related changes. Reports in the literature generally indicate an excellent safety record for sedation and general anesthesia provided by dentists. Nevertheless there is always the potential to improve outcomes. Periodic updating of the regulations related to sedation and anesthesia may offer an opportunity to improve patient safety. The Subcommittee also conducted a comprehensive review of the laws and regulations related to sedation and anesthesia in the California Dental Practice Act. Although they found general consistency with the ADA Guidelines, the ADA definitions of levels of anesthesia and sedation are more contemporary than those presently included in the Act.

The Subcommittee recommended revision of the Dental Practice Act sections related to general anesthesia and conscious sedation to improve clarity and where possible consistency with nationally recognized guidelines such as the ADA Guidelines. This will require both statutory and regulatory amendments. The last major revision to anesthesia and sedation regulations utilizing a task force approach was completed in 2006. Ideally such a revision would be completed every 5-7 years.

It is essential that any proposed changes be clearly stated and agreed to by all communities of interest. Stakeholders within the dental profession include general dentists, periodontists, endodontists, pediatric dentists, oral and maxillofacial surgeons, and dental anesthesiologists. It will be equally important to engage communities of interest outside of dentistry, including the medical and nursing professions and the public. If these proposed changes are to be developed by the Dental Board the subcommittee recommended the Board consider formation of a Task Force that will allow participation by stakeholders. This would require publicly noticed meetings and Board staff support.

As an alternative, a workgroup or task force could be hosted by the California Dental Association attended by Dental Board appointed representatives. This group would then present proposed changes for consideration and possible action by the Board. M/S/C (McCormick/Le) to accept the subcommittee's recommendation. The motion passed unanimously. Bill Lewis, CDA, would like to see a work group developed. He would like to work with the Board.

The meeting adjourned at 12:21pm.