



BOARD MEETING MINUTES
February 27-28, 2014
Wyndham Bayside San Diego
1355 North Harbor Drive, San Diego, CA, 92101

Members Present

Fran Burton, Public Member, President
Bruce Whitchee, DDS, Vice President
Judith Forsythe, RDA, Secretary
Steven Afriat, Public Member
Stephen Casagrande, DDS
Yvette Chappell-Ingram, Public Member
Katie Dawson, RDH
Luis Dominicis, DDS
Kathleen King, Public Member
Ross Lai, DDS
Huong Le, DDS, MA
Steven Morrow, DDS, MS
Thomas Stewart, DDS

Members Absent

Meredith McKenzie, Public Member
Debra Woo, DDS

Staff Present:

Karen Fischer, Executive Officer
Kim Trefry, Enforcement Chief
Dawn Dill, Licensing Manager
Sarah Wallace, Legislative and Regulatory Analyst
Linda Byers, Executive Assistant
Spencer Walker, DCA Senior Staff Counsel

Thursday, February 27, 2014

1. Call to Order/Roll Call/Establishment of Quorum

Fran Burton, President, called the meeting to order at 8:47 a.m. Judith Forsythe, Secretary, called the roll and a quorum was established.

2. Approval of the November 21-22, 2013 Board Meeting Minutes

Motioned/Seconded/Carried (M/S/C) (Afriat/Stewart) to approve the November 21-22, 2013 Board Meeting Minutes. There was no public comment. The motion passed unanimously.

3. President's Report

Dental Board President, Fran Burton gave an overview of her expectations of full participation by all Board members, doing the homework needed to be prepared for each meeting and staying until the meeting is adjourned. She stated that her goals for the coming year include defining the mission of each committee and promoting the Board's primary mission of Protecting the Public. She recognized

guests in the audience including; Dr. Nathaniel Tippet from the Western Regional Examination Board (WREB), Paul Glassman, DDS, MA, MBA. Professor of Dental Practice, Director of Community Oral Health, University of the Pacific, Kathryn Scott, Children's Partnership, Dr. Alan Felsenfeld, California Dental Association (CDA), Gayle Mathe, California Dental Association (CDA), Dr. Lori Gagliardi, California Association of Dental Assisting Teachers (CADAT), Vickie Kimbrough-Walls, American Dental Education Association (ADEA), Lori Hubble, Dental Hygiene committee of California (DHCC), Susan Lopez, California Dental Hygienists Association (CDHA), Dr. William Langstaff, Dr. Guy Acheson, California Association of General Dentists (CAGD), Robert Hanlon, DMD, past Chair of CDA's Government Affairs Council and Stephenie Penginey, Center for Public Interest Law.

4. **Presentation by Paul Glassman, DDS, Office of Statewide Health Planning and Development (OSHDP), Regarding Health Workforce Pilot Project (HWPP) #172 and Assembly Bill 1174 (Bocanegra)**

Dr. Paul Glassman gave a presentation on the Virtual Dental Home Project. He and Kathryn Scott from the Children's Partnership provided an overview and results from the past six years of testing. There was discussion regarding the length of time for training allied personnel, fees, outcomes of treatment, standards of care, access to treatment and follow-up care.

RECESS

5. **Joint Meeting of the Legislative and Regulatory Committee and the Dental Assisting Council for the Purpose of Discussion and Possible Action Relating to Assembly Bill 1174 (Bocanegra)**

Fran Burton, Chair of the Legislative and Regulatory Committee called the roll. Teresa Lua, Chair of the Dental Assisting Council called the roll. A quorum was established. Sarah Wallace, Legislative and Regulatory Analyst gave an overview of Assembly Bill 1174 (Bocanegra) including possible concerns.

RECESS

6. **Discussion and Possible Action Regarding Assembly Bill 1174 (Bocanegra)**

Sarah Wallace, Legislative and Regulatory Analyst provided a summary of the joint meeting and the staff recommended proposed amendments to Assembly Bill 1174 (Bocanegra). There was discussion regarding concerns about leaving decay and Denti-Cal paying for interim fillings instead of permanent fillings. There was also discussion about the material used for the interim fillings and how it will be adjusted after it hardens. Mr. Afriat suggested embracing this change cautiously by taking a watch position and sending a letter to the author asking for the proposed amendments. Dr. Casagrande agreed with Mr. Afriat. M/S/C (Afriat/Casagrande) to take a watch position on AB 1174 and direct staff to send the proposed amendments to the author for inclusion. Ms. Burton and Ms. King proposed a substitute motion: M/S/C (Burton/King) to support AB 1174 if amended. There was discussion about how many amendments were acceptable and the importance of working with the Dental Board to insure that students are fully trained on the new duties and demonstrate full competency. Ms. Scott assured the Board members

that the author will work closely with the Dental Board. There was no further public comment. The substitute motion passed with 9 ayes and 4 noes.

7. **COMMITTEE/COUNCIL MEETINGS**

8. **Discussion and Possible Action Regarding:**

A. **Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to: Amend §§ 1021, 1028, 1030, 1031, 1032, 1032.1, 1032.2, 1032.3, 1032.4, 1302.5, 1032.6, 1033, 1033.1, 1034, 1034.1, 1035, and 1036; Add §§ 1032.7, 1032.8, 1032.9, 1032.10; and Repeal §§ 1035.1, 1035.2, 1036.1, 1036.2, 1036.3, 1037, 1038, and 1038 of Title 16 of the California Code of Regulations Relating to the Portfolio Examination Requirements**

Sarah Wallace, Board Legislative and Regulatory Analyst, reported that the Board approved proposed regulatory language relative to the Portfolio Examination Requirements and directed staff to initiate the rulemaking at its August 2013 meeting. Board staff filed the initial rulemaking documents with the Office of Administrative Law (OAL) on Tuesday, October 29th and the proposal was published in the California Regulatory Notice Register on Friday, November 8, 2013. The 45-day public comment period began on Friday, November 8, 2013 and ended on Monday, December 23, 2013. The Board held a regulatory hearing in Sacramento on Monday, January 6, 2014.

The Board received written comments from: (1) Bruce Sims; (2) the California Dental Association (CDA); (3) Steven W. Friedrichsen, DDS, Professor and Dean, College of Dental Medicine, Western University of Health Sciences; and (4) Avishai Sadan, DMD, Dean, Ostrow School of Dentistry, University of Southern California. Additionally, the Board received verbal testimony from Sharon Golightly, representing the California Dental Hygiene Association (CDHA), at the regulatory hearing.

Ms. Wallace reported that staff reviewed the comments received and developed recommended responses in consultation with the Board's Portfolio Examination subcommittee and Board Legal Counsel. Additionally, staff drafted modified text (attached) for the Board's consideration.

The Board had reviewed the summaries of the comments received and took action regarding the staff recommendations as follows:

Comments Received from Bruce Sims:

Summary of Comments:

Mr. Bruce Sims submitted an email commenting that the phrase "established standards of care" was used in the proposal, and yet consumers cannot find out what such standards are. Mr. Sims commented that he had an experience where a dentist's business manager falsely claimed that a procedure was required by such 'standards of care', and that if there is a document specifying such 'standards of care' for the common dental practices associated with cleaning, repair, and restoration, that document should be available for consumers to reference.

Mr. Sims also commented on the Board's regulatory action titled "Consumer Protection Enforcement Initiative" from 2011. Mr. Sims commented that he saw nothing in the rules and regulations that hold a dentist accountable for the behavior of employees though such accountability exists in law. He commented that dentists must be made aware of their responsibilities in regards to their employee's behavior and that the Board would seem to have that responsibility.

Staff recommended rejection of Mr. Sims comments. Legally, the established standards of care in dentistry are indefinable and cannot be found in textbooks. The *Journal of the American Dental Association* featured an article from Joseph P. Graskemper, DDS, JD, in October 2004 that touched on the standard of care in dentistry and how it has evolved. Dr. Graskemper explained that "the standard of care actually is found in the definition of negligence, which is said to have four elements, all of which must be met to allow negligence to be found in a malpractice lawsuit. Those four elements are as follows: that a duty of care was owed by the dentist to the patient; that the dentist violated the applicable standard of care; that the plaintiff suffered a compensable injury; and, that such injury was caused in fact and proximately caused by substandard conduct." Dr. Graskemper cites that a definition of the standard of care was best stated in *Blair v. Eblen* (461 S.W. 2d370, 370 (Ky 1970)): "[A dentist is] under a duty to use that degree of care and skill which is expected of a reasonably competent [dentist] acting in the same or similar circumstances." Because the standard of care evolves due to court rulings, advances in dental research, continuing education, and the progression of the practice of dentistry, there is no possible way for the Board to define it as it relates to this proposal.

Mr. Sims second comment regarding the regulatory action titled "Consumer Protection Enforcement Initiative" was not relevant to this regulatory proposal, as this was a previous Board rulemaking that became effective in March 2012.

Motioned/Seconded/Carried (M/S/C) (Morrow/Dominicis) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Comments Received from the California Dental Association:

The California Dental Association (CDA) submitted a letter to the Board in response to the Board's rulemaking proposal.

CDA Comment #1 - Section 1028(b)(6):

The CDA questioned if Section 1028 (b)(6) should say something like "proof that the applicant has passed the California Law and Ethics written examination," rather than simply "information as to whether the applicant has taken" the exam.

Staff recommended rejection of this comment. It is not necessary for the Board to obtain proof that an applicant has passed the California Law and Ethics written examination as the Board receives the examination results directly from the vendor. Rather, it is important for staff to have information as to whether an applicant has taken the examination so that staff may determine if there is an

existing applicant file or not because applicants may take the Law and Ethics exam well in advance of submitting a portfolio examination application. If there is not an existing file, staff would know to issue eligibility to an applicant and establish a file.

M/S/C (Afriat/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #2 - Section 1028(e):

The CDA commented that subsections (e)(1), (2), and (3) all use the word “examinee” to refer to the final submittal of the portfolio to the Board. It would seem to be more accurate to consistently use the word “applicant” here, since once they are submitting their completed portfolios to the Board they are no longer being “examined;” the Board’s role is simply to verify completion of the portfolio requirements.

Staff recommended rejection of the term “applicant”; however, staff did recommend modifying the text to replace “examinee” with “candidate”. The term “candidate” is synonymous with the terms “applicant” and “examinee” as a student participating in the portfolio examination pathway to licensure is always considered a “candidate” for licensure throughout the examination and application processes. Additionally, staff recommended adding a definition to clarify the meaning of “candidate”.

Staff did not agree that the Board’s role would be to simply verify completion of the portfolio requirements. Rather, the Board is charged with the responsibility of administering the portfolio examination, via cooperation with California dental schools, and is responsible for making the ultimate decision as to whether a candidate was assessed properly via the examination and has fulfilled the requirements for licensure.

M/S/C (Morrow/Le) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #3 - Section 1028(e):

The CDA commented that the regulations are somewhat unclear about the respective timing and review process for the portfolio itself and the application for licensure. In discussions with board staff, CDA believed the intent is that the portfolio would be submitted and reviewed first, and once the portfolio was determined to be complete, the applicant would be notified and could then submit the licensure application. To make that process clearer in the regulations, CDA suggested the following amendments, commencing after the first paragraph of subsection (e):

(e) Prior to submitting the “Application for Determination of Licensure Eligibility (Portfolio)”, the Board shall have completed its review of the applicant’s submitted portfolio and notified the applicant that he/she has met the requirements for Licensure by Portfolio Examination and is eligible to submit the application.

(1) The earliest date upon which an ~~examinee~~ applicant may submit their portfolio for review by the board shall be within 90 days of anticipated

graduation. The latest date upon which an ~~examinee~~ applicant may submit their portfolio for review by the board shall be no more than 90 days after graduation.

(2) The ~~examinee~~ applicant shall arrange with the dean of his or her dental school for the school to submit the completed portfolio materials to the Board.

~~(3) The Board shall review the submitted portfolio materials to determine if it is complete and the examinee has met the requirements for Licensure by Portfolio Examination.~~

Staff recommended rejection of this comment. The Board would be notified of a candidate's readiness to have their portfolio examination reviewed once the Board receives the "Application for Determination of Licensure Eligibility (Portfolio)" Form 33A-22P (New 08/2013). The dental school is still responsible for submitting the candidate's completed portfolio materials to the Board. Once the Board reviews the "Application for Determination of Licensure Eligibility (Portfolio)" Form 33A-22P (New 08/2013) and determines that the candidate is eligible for licensure, the Board will subsequently send the candidate the "Application for Issuance of License Number and Registration of Place of Practice," (Rev. 11-07). The candidate would submit this form with the applicable initial licensure fee to the Board to be issued a license number. Staff does not believe it's necessary to add the term "anticipated" as it relates to graduation as it does not provide an added benefit or add substance to the proposed language.

M/S/C (Dominicis/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #4 - Section 1032:

The CDA commented that the last sentence of this section states: "The student shall have the approval of his or her clinical faculty prior to beginning the portfolio examination process." The word "approval" implies that a dental school would have the authority to deny a student's request to participate in the portfolio process, thereby forcing him or her to take the WREB exam instead, which does not seem appropriate as a matter of policy. All methods of licensure examination in California are expected to be equivalent and equally available to applicants who meet the necessary requirements. The CDA suggested the following amendment:

"The student shall notify ~~have the approval of~~ his or her clinical faculty prior to beginning the portfolio examination process."

Staff recommended rejection of this comment. The requirement for a student to seek approval prior to beginning the portfolio examination process was intended to ensure that a candidate was ready to begin clinical experiences on patients, thus ensuring patient safety. The Board understands that clinical experiences in dental schools typically begin at the end of the second year; however, seeking prior clinical faculty approval will allow for adequate patient protection in the event there is future reshuffling of curriculum sequencing and clinical experiences happen earlier. However, staff recommended modifying the text to delete this provision from section 1032 and specify this requirement for each individual competency examination for the sake of clarity.

M/S/C (Morrow/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #5 - Section 1032.1

In reviewing the draft regulations in their entirety, the CDA found a number of instances in which the distinction between clinical experiences and competency examinations is not clear and could be confused. Throughout the draft there are references to “completion” or “successful completion” of clinical experiences, which implies that the procedures are completed entirely by the student. Clarifying the definitions here, including providing a definition of “competency examination,” may help prevent confusion later on. Based on prior discussions, it seems to CDA that the clearest distinction is that clinical experiences can include faculty intervention, while competency examinations cannot. CDA suggested adding the following definition of “competency examination,” along with amendments to the definition of “clinical experiences:”

(b) “Clinical experiences” means the procedures, performed with or without faculty intervention, that the examinee applicant must complete to the satisfaction of his or her clinical faculty prior to submission of his or her portfolio examination application.

(c) “Competency examination” means an examinee’s final assessment in a portfolio examination competency, performed without faculty intervention and graded by competency examiners registered with the board.

The CDA also suggested that subsection (e) be deleted, since the term “independent performance” does not appear in the proposed regulations, and thus a definition is not needed.

Staff recommended acceptance of this comment with the exception of replacing “applicant” with “candidate” for reasons previously specified.

M/S/C (Morrow/Burton) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #6 - Section 1032.2:

The CDA suggested several structural/grammatical amendments which they believe will clarify the level of information that needs to be provided to the Board in each applicant’s portfolio:

(a) Each examinee applicant shall complete at least the minimum number of clinical experiences in each of the competencies prior to submission of their portfolio to the Board. ~~Clinical experiences have been determined as a minimum number in order to provide an examinee with sufficient understanding, knowledge and skill level to reliably demonstrate competency.~~ All clinical experiences shall be performed on patients under the supervision of school faculty and shall be included in the portfolio submitted to the Board. Clinical experiences shall be performed at the dental school clinic, or at an extramural

dental facility or a mobile dental clinic approved by the Board. The portfolio shall contain ~~documentation~~ certification that the examinee has ~~satisfactorily~~ completed the minimum number of clinical experiences as follows:

(1) ~~The documentation of~~ oral diagnosis and treatment planning (ODTP) clinical experiences shall include a minimum of twenty (20) patient cases. Clinical experiences for ODTP include: comprehensive oral evaluations, limited (problem-focused) oral evaluations, and periodic oral evaluation.

(2) ~~The documentation of~~ direct restorative clinical experiences shall include a minimum of sixty (60) restorations. The restorations completed in the clinical experiences may include any restoration on a permanent or primary tooth using standard restorative materials including: amalgams, composites, crown build-ups, direct pulp caps, and temporizations.

(3) ~~The documentation of~~ indirect restorative clinical experiences shall include a minimum of fourteen (14) restorations. The restorations completed in the clinical experiences may be a combination of the following procedures: inlays, onlays, crowns, abutments, pontics, veneers, cast posts, overdenture copings, or dental implant restorations.

(4) ~~The documentation of~~ removable prosthodontic clinical experiences shall include a minimum of five (5) prostheses. One of the five prostheses may be used as a portfolio competency provided that it is completed in an independent manner with no faculty intervention. A prosthesis ~~is defined to~~ may include any of the following: full denture, partial denture (cast framework), partial denture (acrylic base with distal extension replacing a minimum number of three posterior teeth), immediate treatment denture, or overdenture retained by a natural or dental implants.

(5) ~~The documentation of~~ endodontic clinical experiences on patients shall include five (5) canals or any combination of canals in three separate teeth.

(6) ~~The documentation of~~ periodontal clinical experiences shall include a minimum of twenty-five (25) cases. A periodontal experience shall include the following: An adult prophylaxis, treatment of periodontal disease such as scaling and root planing, any periodontal surgical procedure, and assisting on a periodontal surgical procedure when performed by a faculty or an advanced education candidate in periodontics. The combined clinical periodontal experience shall include a minimum of five (5) quadrants of scaling and root planing procedures.

(b) ~~Evidence of successful~~ Completion of all required clinical experiences shall be certified by the director of the school's clinical education program on the "Portfolio Examination Certification of Clinical Experience Completion: Form 33A-23P (New 08/13), which is hereby incorporated by reference, and shall be ~~maintained~~ included in the examinee's portfolio submitted to the Board.

Staff recommended acceptance of these comments with the following exceptions:

- Replace the term "applicant" with "candidate";
- Include the following in the definition for "clinical experiences" in Section 1032.1: "Clinical experiences have been determined as a minimum number in order to provide a candidate with sufficient understanding, knowledge, and skill

level to reliably demonstrate competency.” Staff believes that this information will add clarity to the definition.

- Reject the modification to delete the requirement for clinical experiences to be included in the portfolio submitted to the Board. The schools are responsible for maintaining the complete portfolio which includes the documentation of clinical experiences. The portfolio must include the documentation of clinical experiences in order for the Board to issue approval.
- Reject the modification that the portfolio would contain “certification” rather than “documentation” of the completed minimum number of clinical experiences for reasons previously specified.
- Reject the modification to the removable prosthodontic clinical experiences which define a prosthesis in a permissive manner with “may” rather than a definitive manner with “shall”. Staff recommends using “shall”.

M/S/C (Morrow/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #7 - Section 1032.3:

As a general comment that applies to the subsequent sections as well, since the specifics of the clinical experience requirements for all competencies are contained in the preceding section 1032.2, for the sake of clarity the CDA suggested deleting redundant references to clinical experiences in Section 1032.3 and making the section entirely about the competency examination. Thus, the CDA suggested changing the title to “Portfolio Competency Examination: Oral Diagnosis and Treatment Planning (ODTP),” and modifying (a) as follows:

~~(a) The portfolio shall contain the following documentation of the minimum ODTP clinical experiences and documentation of ODTP portfolio competency examination:~~

~~(1) Evidence of successful completion of the ODTP clinical experiences shall be certified by the director of the school’s clinical education program on the “Portfolio Examination Certification of Clinical Experience Completion” Form 33A-23P (New 08/13), which is hereby incorporated by reference, and shall be maintained in the examinees portfolio.~~

~~(2) Documentation providing proof of satisfactory completion of a final assessment in the ODTP competency examination. For purpose of this section, satisfactory proof means the ODTP competency examination has been approved by the designated dental school faculty~~

For the sake of further clarity, the CDA suggested switching the current subsections (b) and (c), so that “Acceptable Patient Criteria” comes before “Competency Examination Requirements.” This seems to make logical sense, since the patient must be chosen before the exam can be taken. The CDA offered a similar suggestion for the remaining competency examination sections.

Staff Recommended Response:

Staff recommended rejection of these comments. Section 1032.3 was not intended to address only the competency examination requirements; rather, it was

intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, staff did not believe it is necessary or would provide further clarity by moving "Acceptable Patient Criteria" before "Competency Examination Requirements" as there does not seem to be any added benefit. Staff recommends clarifying the language in subdivision (a) to clarify that it is applicable to the portfolio examination in its entirety.

M/S/C (Burton/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #8 - Section 1032.3:

The CDA commented that in reviewing the entirety of the current subdivision (b), it is not clear to the CDA how many different patients can be included in the ODTP competency examination. Subsection (b)(2) states that there shall be "one" multidisciplinary portfolio competency exam, but (b)(2) states that "the treatment plan shall involve at least three...disciplines...", and subsequent subsections make reference to "treatment provided to clinical patients." The CDA questioned if this section should more clearly spell out the number of patient treatment plans that can make up this competency examination.

Staff recommended rejection of this comment. Staff believed that the language is clear that the oral diagnosis and treatment planning competency examination would be initiated and completed on one patient and requires a treatment plan involving at least three of the six competency disciplines. Staff does not believe modifications to the text are necessary as this was the agreed upon terminology developed by the focus groups from the dental schools involved in the development of the portfolio examination criteria.

However, staff did recommend some grammatical and technical amendments to clean up the language and correct the inadvertent pluralizing of "patient".

M/S/C (Morrow/Burton) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #9 - Section 1032.4:

The CDA suggested that changes to the title and to subsection (a) be made here that are equivalent to those suggestions for Section 1032.3, and for the same reason.

Staff recommended rejection of these comments. Section 1032.4 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must

contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, staff did not believe it is necessary or would provide further clarity by moving “Acceptable Patient Criteria” before “Competency Examination Requirements” as there does not seem to be any added benefit.

M/S/C (Afriat/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #10 - Section 1032.4:

The CDA found some ambiguity here as to how many patients are to be included in the competency exam, and exactly which restorative procedures are required to be performed, and would defer to the developers of these criteria as to the intent. Specifically, subsection (b) states that the examinee shall document competency “to perform a Class II, Class III, and Class IV direct restoration...” (underline added for emphasis). However, the wording of (b)(2) appears to give the examinee the option to perform two Class II amalgam restorations, with a Class III/IV composite as an option for one of the restorations but not a requirement. This discrepancy may need to be clarified.

Staff recommended acceptance of this comment. The examination should only include two restorations consisting of: (1) one Class II amalgam or composite, maximum one slot preparation; and, (2) one Class III or IV composite. Staff recommended modifying the text accordingly.

M/S/C (Morrow/Le) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #11 - Section 1032.5:

The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

Staff recommended rejection of these comments. Section 1032.5 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate’s portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, staff did not believe it is necessary or would provide further clarity by moving “Acceptable Patient Criteria” before “Competency Examination Requirements” as there does not seem to be any added benefit.

M/S/C (Morrow/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #12 - Section 1032.6:

The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

Staff recommended rejection of these comments. Section 1032.6 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, staff did not believe it is necessary or would provide further clarity by moving "Acceptable Patient Criteria" before "Competency Examination Requirements" as there does not seem to be any added benefit.

M/S/C (Morrow/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #13 - Section 1032.6:

The CDA commented that for each prosthetic option, the examination standards include a reference to follow-up care [i.e. "(5)(H) Evidence the examinee provided the patient post insertion care including adjustment, relines and patient counseling"]. The CDA commented that such open-ended references to follow-up/post insertion care leave it unclear how it will be determined when this competency examination has been completed and a final score can be issued. The CDA questioned if it needs to be clarified in the regulations.

Staff recommended acceptance of this comment and recommended adding "within the established standard of care" to the text.

M/S/C (Morrow/Le) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #14 - Section 1032.7:

The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

Staff recommended rejection of these comments. Section 1032.7 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate's portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential

duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, staff did not believe it is necessary or would provide further clarity by moving “Acceptable Patient Criteria” before “Competency Examination Requirements” as there does not seem to be any added benefit.

M/S/C (Morrow/Chappell-Ingram) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #15 - Section 1032.7:

The CDA commented that subsection (b)(2) states that the endodontic competency exam will consist of “one (1) clinical case.” However, the subsequent subsection (b)(3) uses the word “cases” twice. For the sake of clarity, the Board may wish to change those to “case.”

Staff recommended acceptance of this comment.

M/S/C (Dominicis/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #16 - Section 1032.8:

The CDA makes the same comment and suggestions regarding the title and subsection (a) made for previous sections.

Staff recommended rejection of these comments. Section 1032.8 was not intended to address only the competency examination requirements; rather, it was intended to explain all of the requirements of the candidate’s portfolio in relation to the specified competency. A complete portfolio submitted to the Board must contain documentation of the relevant clinical experiences and the competency examinations for each required competency. Including the numerical requirements for clinical experiences in Section 1032.2 was intended to eliminate the potential duplication that the proposed language would have had if the clinical experience requirements had been distributed amongst each applicable competency section. Additionally, staff did not believe it is necessary or would provide further clarity by moving “Acceptable Patient Criteria” before “Competency Examination Requirements” as there does not seem to be any added benefit.

M/S/C (Morrow/Le) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment # 17 - Section 1032.9:

The CDA commented that since this section is itself establishing the criteria for competency examiner qualifications, the suggested the following amendment to (a):

(a) Portfolio competency examiners shall meet the following criteria established by the board:

Staff recommended acceptance of this comment.

M/S/C (Morrow/Burton) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment # 18 - Section 1032.9:

The CDA commented that subsection (b) requires schools to submit to the Board the names and qualifications of the faculty members “to be approved or disapproved by the Board as portfolio competency examiners,” and to certify that they meet the standards of the school and of these regulations. The CDA commented that the regulations provide no criteria by which the Board would “approve or disapprove” any individual examiner put forth by a school. The CDA questioned on what basis the Board could disapprove examiners if the dental school dean has certified the qualifications. The CDA also questioned if the Board’s review of competency examiners should be left to the periodic auditing process.

Staff recommended rejection of this comment. The portfolio examination is administered by the Board; and as such the Board maintains its authority to approve or disapprove portfolio competency examiners. Such approval by the Board would be based on the required documentation of qualifications provided to the Board as specified in subdivisions (a), (b), and (c). It is important for the Board to maintain its authority to approve or disapprove competency examiners at any time; if the Board only reviewed competency examiners during the periodic auditing process, the Board would risk losing its ability to disapprove competency examiners that are not grading appropriately, which could lead to the Board issuing licenses to candidates who may pose a risk to patient protection.

M/S/C (Afriat/Chappell-Ingram) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment # 19 - Section 1032.9:

The CDA commented that subsection (c) appears redundant and could be deleted; and, subsection (b) already requires the deans to certify that each examiner has met the requirements of (a)(3), which is the calibration requirement described again in (c).

Staff recommended rejection of this comment. Staff did not believe the language exhibits redundancy. Subdivision (a) provides the qualifications for the competency examiners; subdivision (b) specifies that the schools must submit the names, credentials, and qualifications, and a certifying letter from the dean that the examiner satisfies the criteria and standards to conduct the competency examination for the faculty to be considered by the Boards; and, subdivision (c) provides that the dean must submit documentation that the appointed examiners have satisfied the Board’s competency examiner training requirements.

M/S/C (Morrow/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #20 - Section 1032.10:

The CDA commented that they have a concern that subsection (d), as drafted, lacks clarity about the respective roles of the dental school and the Board in determining whether an examiner should be disqualified due to problems in calibration. Because the Board is not envisioned to be involved in the day-to-day operations of this process, the CDA believes their responsibility for making these determinations should lie in the periodic auditing process, and that the schools should maintain the ongoing responsibility to dismiss examiners. The CDA suggested the following clarifying amendments:

(c) Calibration of Examiners. The calibration of portfolio competency examiners shall be conducted to maintain common standards as an ongoing process. Portfolio competency examiners shall be provided feedback about their performance and how their scoring varies from their fellow examiners. Portfolio competency examiners whose error rate exceeds psychometrically accepted standards for reliability shall be re-calibrated. If at any time a school determines that a portfolio competency examiner is unable to be meet the board's re-calibrated standards, the school shall disapprove remove the portfolio competency examiner from further participation in the portfolio examination process. In addition, the Board may through its auditing process require a school to remove an examiner based on findings that the examiner does not meet the Board's calibration standards.

Staff recommended rejection of this comment. The portfolio examination is administered by the Board; and as such the Board maintains its authority to approve or disapprove portfolio competency examiners. It is important for the Board to maintain its authority to approve or disapprove competency examiners at any time; if the Board only reviewed competency examiners during the periodic auditing process, the Board would risk losing its ability to disapprove competency examiners that are not grading appropriately, which could lead to the Board issuing licenses to candidates who may pose a risk to patient protection.

However, staff did recommend adding language to subdivision (c) to specify that the school is required to notify the Board if at any time a school determines that a competency examiner is unable to meet the Board's calibration standards.

M/S/C (Morrow/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #21 - Section 1034:

The CDA commented that subsection (c) states: "An examinee shall be deemed to have passed the portfolio examination if his or her overall score is at least 75 in each of the portfolio competency examinations." Taken out of context, this could imply that this is the sole condition for being awarded a license via portfolio. The CDA suggested the following clarifying amendments:

Along with the requirements of Section 1028, an examinee shall be deemed to have passed the portfolio examination eligible for licensure via portfolio only if his or her overall scaled score is at least 75 in each of the portfolio competency

examinations.

Staff recommended rejection of this comment. The contents of this section are specific to the grading of the competency examinations, not the portfolio examination in its entirety. Therefore, staff recommends modifying the title of the section to “Portfolio Competency Examination Grading”.

M/S/C (Morrow/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #22 - Section 1034:

The CDA commented that subsection (d) as drafted states: “The executive officer shall notify examinees who have passed or failed the portfolio examination.” Given that the entire process for the Board’s review of portfolios and licensure applications is contained in Section 1028, this subsection is not needed and could cause confusion, especially since this section is about competency examinations. Under the portfolio process, the Board really is not determining whether someone has “passed or failed” the examination; rather, its role is to determine whether the portfolio is complete as submitted by the school, and to issue a license once that determination has been made and all other requirements have been met.

Staff recommended rejection of this comment. The Board still has to verify scoring accuracy and the Board maintains the final approval, as this is a Board administered examination.

However, staff did recommend modifying the text to replace “executive officer” with “Board” so that it is clearly understood as a Board-administered examination. The Board delegates authority to staff to review examination results and applications to determine eligibility for initial licensure via the portfolio examination.

M/S/C (Afriat/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #23 - Section 1034:

The CDA commented that subsection (f) in its entirety appears to be redundant and unnecessary, since the scoring factors already are included in the sections for each competency examination.

Staff recommended acceptance of the comment. Staff recommended modifying the language to only reference the relevant subsections of each competency so that the competency examination grading criteria may be clearly understood.

M/S/C (Morrow/Burton) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #24 - Section 1035:

The CDA commented that this section as a whole appears to be a throwback to the days when the Board was administering its own clinical examination, and thus it does not seem to fit comfortably within either the WREB or the portfolio process.

In each of those cases, the CDA's assumption would be that appeals at least initially should be directed to the examining entity (WREB or the dental school) and not to the Board. We do, nevertheless, believe that there should be built-in the ability for an applicant to make a secondary appeal to the Board if he or she is dissatisfied with the due process received by the examining entity. Therefore, the CDA suggested the following amendments:

(a) An examinee who has failed an examination shall be provided with notice, upon written request to the examining body, of those areas in which he/she is deficient ~~in the clinical and restorative laboratory phases of such examination.~~

(b) An unsuccessful examinee who has been informed of the areas of deficiency in his/her performance ~~on the clinical and restorative laboratory phases of the examination~~ and who has determined that one or more of the following errors was made during the course of his/her examination and grading may appeal to the ~~board~~ examining body within sixty (60) days following receipt of his/her examination results:

- (1) Significant procedural error in the examination process;
- (2) Evidence of adverse discrimination;
- (3) Evidence of substantial disadvantage to the examinee

After completion of the examining body's appeal process, the examinee may submit an appeal to the Board within 30 days of the examining body's decision. Such appeal shall be made by means of a written letter specifying the grounds upon which the appeal is based. The board shall respond to the appeal in writing and may request a personal appearance by the examinee. The board shall thereafter take such action as it deems appropriate.

~~(c) This section shall not apply to the portfolio examination of an examinee's competence to enter the practice of dentistry.~~

Staff recommended rejection of this comment. This section is not applicable to the Board's portfolio examination as exempted in subdivision (c). Additionally, the CDA proposed modifications would adversely impact the Board's California Law and Ethics examination.

M/S/C (Morrow/Dominicis) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

CDA Comment #25 - Section 1036:

The CDA commented that similar to the preceding section, by grafting language on to old regulatory language that pertained more to the Board's own clinical examination, and which now applies to the WREB exam, these amendments are somewhat confusing. For example, subsection (a) would appear to allow a portfolio licensure applicant to obtain remedial education at a dental school other than the one he/she is currently attending, which doesn't make much sense. In addition, the proposed amendments to subsection (b)(1) create similar ambiguity by adopting a portfolio-specific form (seemingly leaving no equivalent form for WREB examinees), but then implying that the form should be submitted to the Board (not to the school) prior to retaking a competency examination, which makes

little sense given that the Board would otherwise not be involved with an individual portfolio examinee at that stage of the process. The CDA commented that the Board may want to consider creating a separate remedial education section specific to the portfolio process.

Staff recommended acceptance of this comment and recommended modification of the text to differentiate between the remedial education process for the Board's portfolio examination and the WREB examination.

M/S/C (Dominicis/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Comments Received from Steven W. Friedrichsen, DDS, Professor and Dean, College of Dental Medicine, Western University of Health Sciences

Concern #1 - Impact to Schools:

The CDM commented that the original intent was that the Portfolio Examination process would fit within the curriculum and patient care processes of the dental schools; the estimated impact to the schools was envisioned to be "minor and absorbable". While the school understands the original intent, they wanted it to be recognized that as the portfolio examination has grown in complexity through the design process, it no longer meets that intent.

The letter commented that portfolio was anticipated to logistically include a set of uniform, collaboratively developed competency examinations that would be seamlessly integrated into each of the schools assessment systems. In order to achieve the collaborative buy-in of the six dental schools, it appears the rubrics are overly generalized and there is a lack of uniformity in the grading between the various competencies. The faculty who would serve as portfolio competency examiners determined the portfolio competencies would not function as a wholesale replacement for similar competencies that are integrated into the CDM's clinical assessment systems. The letter stated that it appears that the CDM would either have to provide additional definition to the portfolio rubrics and devise a conversion matrix for their grading system, or use the portfolio competencies in parallel with the CDM's. Dr. Friedrichsen noted that either of those options would require a significant added investment of time and personnel to support two systems – the portfolio competencies and the CDM's current assessment practices.

The letter stated that each component of the portfolio has an associated cost. The recordkeeping for audits, inter-institutional calibration processes, separate tracking for numerical requirements and logistics of scheduling multiple faculty for competency examinations, collectively represents a significant cost; and as designed, that cost would be borne by the schools. The letter provided that those costs would most likely accrue to the students of schools that choose to participate. These imbedded costs would be amortized among all students in a school – even those taking other licensure exams.

The letter illustrated that an example of how costs can quickly accumulate is readily seen by reviewing the *Impact on the Board* that is outlined on page 7 of the

Notice. The projected impact to the Board's budget exceeds \$100,000 per year and includes both administrative and adjudication costs. The CDM noted that it should be recognized that for each and every expense incurred by the Board, there is a parallel costs to the dental schools. The CDM expects that the projected costs for the administration of the portfolio exam are not minor and will be difficult to absorb without passing the expense along to the students. The CDM's students and faculty alike are concerned that significant implementation costs would affect the tuition or fees.

Staff recommended rejection of this comment. The Board worked collaboratively with the six California dental schools to design the portfolio examination. The examination was developed to fit seamlessly into the existing school curriculum by using the existing resources. Each competency component of the exam was developed by focus groups composed of representatives from each of the six California dental schools. These regulations are implementing the findings and collaborative work of those focus groups. Participation of the California dental schools in the Board's portfolio examination is entirely voluntary; and no other school has expressed similar concerns. Additionally, the projected impact to the Board of \$100,000 was in regards to revenue from applications and not an expense.

M/S/C (Afriat/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Concern #2 - Portability:

The CDM commented that they are concerned that the anticipated lack of portability to other states will detract from student participation. An examination that does not qualify for licensure in other states could deter student participation. In the current dental practice environment, dental graduates frequently find that employment opportunities often cross state borders. The CDM notes that it will be critical to investigate and communicate how the portfolio examination will be viewed by other states in their licensure decisions, both in initial licensure and when applying for licensure by credentials. The CDM anticipates that students would most likely choose a regional examination that offers the opportunity for licensure in a number of states rather than risk the geographic restriction to California.

As a private institution, the CDM acknowledges that a significant percentage of their students will seek licensure in other states and the investment of supporting two examination processes (both WREB and the portfolio examination) will have to be carefully weighed by the CDM once the final processes and procedures are in place. If the lack of portability drives the interest rate in students below a critical threshold, the CDM would likely need to reluctantly not participate in the portfolio examination.

Staff recommended rejection of this comment. The portability of the Board's portfolio examination is not relevant to this rulemaking. The portfolio examination was not designed to be portable across states; however, the Board understands that other states are considering adding a portfolio type examination to their

pathways to licensure. The Board hopes that portability will be available some time in the future. Additionally, taking the Board's portfolio examination would not preclude a candidate from taking the WREB examination.

M/S/C (King/Morrow) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Concern #3 - Liability Coverage for Faculty and Patients:

The CDM commented that they have two significant liability concerns related to the integrated format with portfolio competency exams.

First, if portfolio competencies are used solely for licensure, on those dates and times when the dental school faculty is serving as the portfolio competency examiners, they are in essence acting on behalf of the Board rather than the CDM. Under those circumstances, the faculty will be conducting the portfolio competencies for the purposes of licensure in California, which is not and cannot be a graduation requirement of the CDM. It is nearly inevitable that at some point a student will not pass the portfolio competencies. When that occurs, it is also inevitable that the student will consider seeking legal recourse. Because the portfolio competencies are not a component of the CDM curriculum required for graduation, Western University's liability coverage for their faculty will not extend to the administration of the exam on behalf of the Board. If the portfolio examination is administered at Western University of Health Sciences as proposed, the Board would need to provide appropriate coverage for the actions of the faculty.

Second, a similar situation can be forecast on behalf of the patients who are involved in the competency examinations. On those dates and times, the patients are in essence being treated for the purposes of an examination process. If the patient encounters a substantive issue requiring correction or remediation, our University's liability carrier is likely to consider the event uncovered – again California licensure is not a graduation requirement for their students, and therefore, not a component of the curriculum. If the portfolio examination is administered at Western University of Health Sciences as designed, the Board (or students) would need to provide appropriate coverage for the relevant patient care process.

Additionally, if the portfolio examination process extends beyond commencement, the CDM would need to construct a specific mechanism to allow students to participate in the requisite competency exams, completion of requirements, or remediation.

Staff recommended rejection of this comment. This comment is based on speculation and is not relevant to the proposed regulations concerning examination requirements. The Board worked collaboratively with the six California dental schools to design the portfolio examination. The examination was developed to fit seamlessly into the existing school curriculum by using the existing resources. Each competency component of the exam was developed by focus groups composed of representatives from each of the six California dental schools. These regulations are implementing the findings and collaborative work of those focus

groups. Participation of the California dental schools in the Board's portfolio examination is entirely voluntary; and no other school has expressed similar concerns. The schools would administer the Board's exam, but would not be working for the Board. Since the student's would be performing the procedures as part of their curriculum, and it is key that the patient is a patient of record within the school receiving treatment through a normal sequence, it was assumed that the liability would be assumed by the school. Staff believes Western University's concern is only an individual concern that is unique to their particular education model.

M/S/C (Afriat/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Concern #4 - Numerical Requirements:

The CDM commented that they are concerned that the use of numerically based requirements is not in alignment with competency based outcome measures.

The Commission on Dental Accreditation (CODA), as well as most contemporary assessment systems, has moved the educational processes to competency-based outcomes. The numerical requirements of the portfolio process run counter to the design of the CDM dental education program and CODA standards for accreditation. As a result of changing disease patterns, treatment procedures and demographics, it is likely that the CDM would be challenged to provide all students with sufficient numbers of procedures in some areas (i.e. removable prosthodontics) on a consistent basis to meet the numerical requirements outlined as well as the competencies.

Reaching specific targeted numbers of requirements could put the students and the CDM in untenable positions. The CDM would need to either preferentially direct patient care experiences selectively to the portfolio examination participants to meet the numerical requirements or deny students the opportunity to participate in the portfolio licensure pathway. The use of specific numbers of procedures has served as an ethical pitfall for decades – students “make” patient care fit the requirements in order to achieve a goal. The CDM encourages the Board to revisit this component of the portfolio examination.

Staff recommended rejection of this comment. The Board worked collaboratively with the six California dental schools to design the portfolio examination. The examination was developed to fit seamlessly into the existing school curriculum by using the existing resources. Each competency component of the exam was developed by focus groups composed of representatives from each of the six California dental schools. These focus groups established the number of clinical experiences required as part of the examination. These regulations are implementing the findings and collaborative work of those focus groups. If it becomes necessary in the future, the Board may need to reevaluate the number of required clinical experiences if there are changes in the population of individuals seeking dental treatment at dental schools; however, this is not necessary at this point in the examination's development. Participation of the California dental

schools in the Board's portfolio examination is entirely voluntary; and no other school has expressed similar concerns.

M/S/C (Dominicis/Afriat) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Potential Solutions – Allow the Use of Existing Systems:

The CDM would like the Board to consider an option that would allow the schools to request the Board review existing competency examinations and processes as equivalent alternatives to the portfolio competencies and requirements.

The Board may want to consider providing schools with the option of using the existing competency-based assessments conducted by the individual schools. This would potentially solve several key concerns. The schools that want to exercise this option could submit a copy of their competency assessment rubrics, grading scale and faculty calibration plan for the identified portfolio competencies. The Board would then review the submission to assure that it was equivalent to the portfolio competencies. All students who completed the Board approved plan of competencies and other requirements would be considered for licensure.

Developing this option would allow schools to use their existing assessment systems and outcomes reporting processes which already support the CODA Standards for accreditation, college outcome and assessment plans and institutional learning objectives. Using existing systems and processes in lieu of the proposed competencies and requirements would help the portfolio examination meet the intent of "minor and absorbable" impact. The liability concerns would also evaporate through the utilization of existing graduation requirements.

The same option process should be considered for the requirements. Schools with existing requirements processes could modify them to equate to the portfolio requirements. Those schools that have a competency-based curriculum could submit their overarching competency assessment process for review by the Board for approval in lieu of submitting numerical requirements.

Staff recommended rejection of this comment. The Board worked collaboratively with the six California dental schools to design the portfolio examination. The examination was developed to fit seamlessly into the existing school curriculum by using the existing resources. Each competency component of the exam was developed by focus groups composed of representatives from each of the six California dental schools. These regulations are implementing the findings and collaborative work of those focus groups. Participation of the California dental schools in the Board's portfolio examination is entirely voluntary; and no other school has expressed similar concerns.

M/S/C (King/Dawson) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Comments Received from Avishai Sadan, DMD, Dean, Ostrow School of Dentistry of the University of Southern California:

Summary of Comments:

Dr. Sadan submitted a letter in response to the proposed rulemaking thanking the Board for the documentation concerning the portfolio examination requirements. The letter stated that the faculty at the Ostrow School of Dentistry of USC has welcomed the opportunity to participate in the integration process of merging the portfolio evaluation of candidate competency within their clinical education program. The school feels their students will be able to comply with the minimum required experiences as outlined in the initial rulemaking documents; although, the school may need additional time to provide a more detailed response in regards to a timeline for implementation and clinical faculty calibration with the portfolio criteria and standards.

There was no need to respond to this comment as there are no comments in response to the language that was proposed. Board staff will be working with the dental schools closely through the implementation and calibration processes, once the regulations become effective. The Board did not take any action.

Comments Received from Sharon Golightly, California Dental Hygiene Association, at the Regulatory Hearing Held on January 6, 2014 in Sacramento, CA:

Sharon Golightly, representing the California Dental Hygiene Association, stated that there was concern that the examination did not include testing of a dentist's skills and competency relating to the administration of local anesthesia and nitrous oxide. Ms. Golightly commented that this concern stemmed from the fact that the use of local anesthesia and nitrous oxide has led to citations and deaths occurring during dental treatment. Ms. Golightly noted that the administration of local anesthesia and nitrous oxide was included as components of the proposed competency examinations, but felt that they should be tested as a separate stand-alone competency examination. She stated that this is a competency that sees a lot of lawsuits, especially in the field of pedodontics, as children may easily be overdosed. She commented that it should be examined in an educational institution.

Ms. Golightly explained that the Western Regional Examination Board (WREB) Examination for hygiene candidates has a separate examination to test a candidate's competence in the application of local anesthesia and that she felt there should be the same standard in the practice of dentistry to provide public protection as it is an area where she felt the skills and competency are inadequate.

Staff recommended rejection of this comment. The competencies assessed as part of the Board's proposed Portfolio Examination requirements include more than adequate training and competency evaluation in pain management. While pain management using local anesthesia and nitrous oxide is not a separate competency that is assessed as part of the Portfolio Examination, these pain management options are embedded within the competencies for direct restoration, indirect restoration, periodontics, endodontics, and removable prosthodontics. Additionally, it is not in the best interest of a patient to administer anesthetic agents

for the simple purpose of assessing the administration of a drug without patient treatment.

M/S/C (Morrow/Chappell-Ingram) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

Additional Staff Recommendations:

Staff recommended modifying the text to correct technical and grammatical errors.

M/S/C (Afriat/King) to accept the staff recommended response. There was no further discussion or public comment. The motion passed unanimously.

B. Adoption of Proposed Amendment of §§ 1021, 1028, 1030, 1031, 1032, 1032.1, 1032.2, 1032.3, 1032.4, 1302.5, 1032.6, 1033, 1033.1, 1034, 1034.1, 1035, and 1036; Proposed Addition of §§ 1032.7, 1032.8, 1032.9, 1032.10; and Proposed Repeal of §§ 1035.1, 1035.2, 1036.1, 1036.2, 1036.3, 1037, 1038, and 1038 of Title 16 of the California Code of Regulations Relating to the Portfolio Examination Requirements

M/S/C (Afriat/Dominicis) to modify the text in response to the comments and recommendations received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the Board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to sections 1021, 1028, 1030, 1031, 1032, 1032.1, 1032.2, 1032.3, 1032.4, 1302.5, 1032.6, 1033, 1033.1, 1034, 1034.1, 1035, and 1036, adopt the proposed addition of sections 1032.7, 1032.8, 1032.9, 1032.10, 1036.01, and adopt the proposed repeal of sections 1035.1, 1035.2, 1036.1, 1036.2, 1036.3, 1037, 1038, and 1038 of Title 16 of the California Code of Regulations Relating to the Portfolio Examination Requirements as noticed in the modified text.

9. Discussion and Possible Action Regarding a Special Teleconference Meeting in April to Consider Any Adverse Comments Received Regarding the Board's Modified Text Relative to the Portfolio Examination Requirements Rulemaking

The Board accepted the staff recommendations and voted to modify the text for the Portfolio Examination Requirements rulemaking in Agenda Item 8.

In the event the Board receives adverse comments in response to the modified text, the Board will need to hold a special teleconference meeting to respond to the comments to expedite the adoption of these regulations. If no adverse comments are received after the 15-day public comment period, there will be no need for the Board to hold a special teleconference meeting, since the Board would have already adopted the modified text as the final text at the Board meeting. Board staff would then prepare the final rulemaking documents.

M/S/C (Afriat/Stewart) to schedule a tentative special teleconference for Wednesday, April 9, 2014 at 12:00 p.m. to respond to any adverse comments that may be received

in response to the modified text. In the event the Board does not receive any adverse comments, the special teleconference will be cancelled. Confirmation or cancellation of the meeting will be sent to the Board members by March 19, 2014. There was no public comment. The motion passed unanimously.

10. **Public Comment of Items Not on the Agenda**

There was no public comment.

11. **Recess**

The Board recessed at 5:30 p.m.

Friday, February 28, 2014

12. Call to Order/Roll Call/Establishment of Quorum

President Fran Burton called the meeting to order at 8:10 a.m. Roll was called and a quorum was established. Ms. Burton introduced guests in the audience including Brooke Bodart, Center for Oral Health, Dr. Detsch, California Society of Periodontists, Susan Lopez, Past President of the California Dental Hygienists Association, Corrinne Fishman, Department of Consumer Affairs Executive Office, Gayle Mathe, California Dental Association, Lori Hubble, Executive Officer, Dental Hygiene Committee of California, Michelle Hurlbutt, President, Dental Hygiene Committee of California, Alan Felsenfeld, California Dental Association, Dr. Lori Gagliardi, California Association of Dental Assisting Teachers, and Dr. Michael Ricupito, California Association of Orthodontists. The Board immediately went into Closed Session. The Full Board reconvened at 11:08 a.m.

13. Executive Officer's Report

Karen Fischer, Executive Officer, gave an overview of her activities on behalf of the Dental Board. She reported on the status of staff recruitments and hiring.

14. Budget Report

Executive Officer, Karen Fischer, MPA, gave an overview of the budget including statistics on cost recovery. There was discussion about the consequences of going over budget.

15. Update from the Department of Consumer Affairs' Executive Office

Corinne Fishman from the Department of Consumer Affairs Executive Office reported on the Department's Strategic Plan and other activities.

16. Update from the Dental Hygiene Committee of California (DHCC)

Lori Hubble, Executive Officer of the DHCC and Michelle Hurlbutt, President of the DHCC reported that the DHCC Disciplinary Guidelines are finally in place. They will be having their Sunset Review Hearing on March 17, 2014. They invited Ms. Fischer and Ms. Burton to attend their meeting on May 5-6, 2014 in Southern California. Gayle Mathe, California Dental Association (CDA), commented that CDA wanted to go on record stating their concerns surrounding the proposed Dental Hygiene regulations that appear to define and/or interpret the scope of practice for Dental Hygienists. CDA submitted their comments to DHCC during the comment period and also sent a letter to the Dental Board and the Department of Consumer Affairs requesting legal analysis of those sections of the proposed language.

17. Presentation by Representative from the California Dental Association (CDA) Regarding "Give Kids a Smile"

Gayle Mathe, CDA, gave a presentation on their Give Kids a Smile Program. She reported that part of the program includes dentists who "adopt" children who need further care after the free care event in order to provide them with additional no fee care. 124 volunteer Sacramento dentists "adopted" 399 children providing \$195,076 worth of free care. Kathleen King commented that she attended the

Santa Clara event that CDA sponsored where she found that about 50% of the children seen had urgent or emergency dental needs.

18. Staff Presentation Regarding Pathways to Licensure for Dentists and Dental Assistants

Dawn Dill, Licensing Unit Manager, gave an overview of the information provided including a briefing on the requirements for all forms of licensure. Ms. Burton suggested that the Dental Board develop a pamphlet or brochure containing the information on all of the pathways to licensure. Ms. Fischer commented that Ms. Wallace is working on language for the Licensure by Credential regulations. Ms. Wallace stated that she hopes to have draft language available for review at the Board Meeting scheduled in May.

19. Discussion and Possible Action Regarding Adoption of the Revisions to the Board Member Administrative Procedure Manual

Ms. Fischer gave an overview of the material provided. She stated that the manual will be updated periodically. M/S/C (Afriat/Dominicis) to adopt the revisions to the Board Member Administrative Procedure Manual now titled the Dental Board of California Policy and Procedure Manual. Spencer Walker, Senior Legal Counsel, suggested an amendment to page 12 in reference to the President's message; strike the word quarterly. The motion passed with the amendment.

20. Discussion and Possible Action Regarding the Appointment of One Member and Reappointment of Four Members to the Diversion Evaluation Committee

Thomas Stewart, DDS, reported that he spoke with the candidate via telephone. He recommended acceptance of this candidate as a member of the Dental Board's Diversion Evaluation Committee. M/S/C (Stewart/Afriat) to accept the recommendation to appoint Anca Severin to fill the dental auxiliary vacancy on the Southern Diversion Evaluation Committee. The motion passed unanimously.

M/S/C (Afriat/Forsythe) to re-appoint the following members to a second term of four years: Dina Gillette, RDH, Lynn Zender, LCSW, Thomas Specht, MD and J. Steven Supancic, Jr. DDS, MD. The motion passed unanimously.

21. Discussion and Possible Action Regarding an Appointment to the Dental Assisting Council

Karen Fischer, Executive Officer, gave an overview of the information provided. Ms. Forsythe stated that she reviewed applications submitted by the candidates and she suggested reappointing Anne Contreras. M/S/C (Burton/Whitcher) to re-appoint Anne Contreras to the Dental Assisting Council. The motion passed unanimously.

22. Discussion and Possible Action To:

(A) Reconsider Promulgation of a Regulation to Require an Administrative Law Judge Who has Ordered a Decision Finding that a Licensee Engaged in Sexual Misconduct to Order Revocation Which May Not be Stayed

Sarah Wallace, Legislative and Regulatory Analyst, gave an overview of the information provided. M/S/C (Morrow/Afriat) to reconsider promulgation of a regulatory package to amend California Code of Regulations, Title 16, Section 1018 as it relates to revocation for sexual misconduct. Dr. Le suggested encouraging Continuing Education instructors to include this topic. The motion passed unanimously.

(B) Initiation of a Rulemaking to Amend California Code of Regulations, Title 16, Section 1018 Relating to Revocation for Sexual Misconduct

M/S/C (King/Afriat) to approve the proposed regulatory language relevant to revocation for sexual misconduct and direct staff to take all steps necessary to initiate the formal rulemaking process, including noticing the proposed language for 45-day public comment, setting the proposed language for a public hearing, and authorizing the Executive Officer to make any non-substantive changes to the rulemaking package. If after the close of the 45-day public comment period and public regulatory hearing, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to California Code of Regulations, Title 16, Section 1018 as noticed in the proposed text. The motion passed unanimously.

23. Dental Assisting Council Report

Teresa Lua, Chair of the Dental Assisting Council reported that the minutes from the August 26, 2013 and November 21, 2013 Dental Assisting Council meetings were approved. She appointed a subcommittee consisting of Ms. Forsythe and Ms. Contreras to work with staff to review the Registered Dental Assistant (RDA) examination process and Ms. Ramos and herself to work with staff to review the Registered Dental Assistant in Extended Functions (RDAEF) examination process in order to identify improvements.

24. Enforcement Committee Report

Steven Afriat, Chair of the Enforcement Committee reported that the minutes from the February 28, 2013 Enforcement Committee meeting were approved. He stated that he is soliciting recommendations for the Enforcement Committee's Mission Statement.

25. Legislative and Regulatory Committee Report

Fran Burton, Chair of the Legislative and Regulatory Committee reported that the minutes from the February 28, 2013 Legislative and Regulatory Committee meeting were approved. The committee did not extend its Mission Statement beyond what they are already doing.

26. Examination Committee Report

Dr. Casagrande, Chair of the Examination Committee reported that the minutes from the February 28, 2013 Examination committee meeting were approved. He stated that the Examination Committee's Missions are:

1. Implementation of the Portfolio Pathway to Licensure.

2. Research the possibility of including regional examinations as a pathway to licensure. He appointed a subcommittee of Drs. Le and Lai to do the research and update the Board.
3. Begin the process of implementing a Portfolio Pathway to Licensure for Registered Dental Assistants. He appointed a subcommittee of Yvette Chappell-Ingram and Judy Forsythe, RDA to research the possibilities and report back to the Board.
4. Initiate an occupational analysis on the Western Regional Examination Board (WREB) He appointed a subcommittee of Judy Forsythe, RDA, and Dr. Morrow to research this issue and report back to the Board.

27. Access to Care Committee Report

Dr. Le, Chair of the Access to Care Committee reported that they have deferred development of their mission statement until the May meeting.

28. Licensing, Certification & Permits Committee Report

Dr. Whitcher, Chair of the Licensing, Certification & Permits Committee reported that the minutes from the February 28, 2013 Licensing, Certification & Permits Committee meeting were approved.

29. Public Comment of Items Not on the Agenda

There was no public comment.

30. Future Agenda Items

There were no requests for future agenda items

31. Board Member Comments for Items Not on the Agenda

There were no Board Member comments.

32. Adjournment

The Dental Board meeting adjourned at 1:51 p.m.