



DENTAL BOARD OF CALIFORNIA
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Embassy Suites Hotel LAX North
 9801 Airport Blvd.
 Los Angeles, CA

November 7-8, 2002
Board Meeting
Minutes

Board President, Alan Kaye, DDS, called the meeting to order at 9:15 am. Roll was called and a quorum established.

Members Present

David Baron, Public Member
 Newton Gordon, DDS
 Lawrence Hundley, DDS
 Alan Kaye, DDS
 LaDonna Drury-Klein, RDA
 Coordinator
 Michael Pinkerton, Public Member
 George SooHoo, DDS
 Ariane Terlet, DDS
 Chester Yokoyama, DDS

Staff Present

Gladys Mitchell, Interim Executive Officer
 Alan Mangels, Attorney General Liaison
 Norine Marks, Legal Counsel
 Don Chang, Legal Counsel
 Peggy Bagdasarian, Enforcement
 Errol Chisom, Legislative Coordinator
 Anita Dowty, Enforcement Unit
 La Rita Abdul-Rahman, Secretary
 Lynn Thornton, Chief of Enforcement

Absent

Patricia Osuna, RDH

AGENDA ITEM 3 Approval of Minutes

The minutes of the August 8-9,2002 meeting were approved (Pinkerton/Terlet) with the following corrections:

- 1) Item 6 – change the word augmentations to reductions
- 2) Item 19 – add COMDA Chair, Ms. Rhona Lee presented the COMDA Report.
- 3) Items 20,21,22 – change recommends to recommended.
- 4) Item 23 – add COMDA Chair, Ms. Rhona Lee presented a short synopsis of the history behind the Independent Consultant Report.
- 5) Item 24 – ~~Since the inception~~ COMDA recommended.
- 6) Item 27 – Use of Devices Intra-Orally by RDA's add COMDA provided legal counsel's opinion regarding the use of intra-oral devices which reflected that such devices can be used by auxiliaries if within the current standard of care and the supervising dentist's authority to delegate the procedure(s) based on the auxiliary's training, education, and skills.

The minutes of the September 28, 2002 meeting were (Gordon/Baron) approved with the following change:

- 1) Personnel Officer, Sandra Mayorga's last name was misspelled.

AGENDA ITEM 4 President's Report

Dr. Alan Kaye, President, reported that the Board is off to an excellent start while referencing the success of the November 7, 2002 informational hearing of the Dental Materials Fact Sheet. President Kaye is optimistic of the progress made by the board during a time of budget cuts, problematic ties and a loss of personnel, while the Legislature is showing such a heightened interest in the Dental Board and its functions.

As part of the president's report, Dr. Kaye made the following changes to some committee assignments to include:

- 1) Internet Research Committee – established to monitor what type of information is being provided on the Internet. This committee will now be a part of the Enforcement Committee.
- 2) Access to Care for Children Committee – established to improve the oral care and to help educate students in improving oral hygiene. Dr. Ariane Terlet requested and was approved to be added to this committee. This committee will be a part of the Strategic Planning Committee, which is being added to the Budget Committee. Dr. George SooHoo also requested and was approved to be added to the Budget Committee.
- 3) Dental Hygiene Board Committee – This committee will become a part of the Legislative Committee. Dr. Ariane Terlet requested to be placed on this committee while Ms. LaDonna Drury-Klein has asked to be removed from this committee.
- 4) Computer-Based Exam Committee will become a part of the Examination Committee.
- 5) An Ad Hoc Committee to review the Perio Examination was established under the Examination Committee. Ms. Shanda Wallace, Chief Examiner for COMDA and Ms. Katie Dawson of CDHA were appointed to serve on this ad hoc committee.
- 6) The name of the Committee on Accreditation shall be changed to the Committee on Accreditation of Foreign Dental Schools.

It was m/s/c (Baron/Hundley) to make the above changes to committee assignments.

Dr. Kaye asked Mr. Michael Pinkerton, as chair of the EO Search Committee, to update the board on the Executive Officer Search. The final filing date for applications is December 3, 2002. The Committee opted not to use a Professional Search Selection Firm due to fiscal and time constraints. The Board will use the Department of Consumer Affairs advertising and application process for the position. The committee will screen all applications and present the names of three candidates to be interviewed by the full board.

AGENDA ITEM 5 Interim Executive Officer's Report

Ms. Gladys Mitchell, acting as Interim EO for the past five weeks, thanked the board for entrusting her with position while in search of a permanent EO. Ms. Mitchell has

been meeting with some of the stakeholders of the Board and working toward better relations on behalf of the board. She thanked some of the staff members for their extra assistance during this transition period.

Ms. Mitchell informed the board of the status of the following issues:

- Work being done in preparing the reports due November 19, 2002 to the Joint Legislative Sunset Review Committee. Dr. Kaye, Dr. SooHoo, Mr. Pinkerton, along with designated staff will be attending the Sunset Hearing on November 19, 2002.
- Update on staffing issues and the fact that the board has lost three positions due to the 6,000 statewide cutbacks. There are currently three vacancies in addition to the EO and Assistant EO positions, two of which are investigator positions. Staff member, Patricia Lux is scheduled to retire effective December 1, 2002. The board is seeking an exemption for her position, as well as for the AEO position.
- The great impact AB 1116 (the sunseting of the Restorative Technique Exam) is having on our Examination Unit.
- The board's new automated phone system and improvements being done to enhance our website.
- The new Dental Practice Act (DPA), which has not been updated since 1994, will be available for distribution sometime in December 2002. Dr. Ariane Terlet spoke to the currency of the newly printed version of the DPA and asked if the most current regulatory changes for auxiliary duties would be included in the new version. Ms. Gladys Mitchell reported that they would not and that, in fact, there would be no inclusion of the latest regulations due to the timing of the encumbered money for the printing of the DPA being so far in advance of the latest regulatory changes.

Invoice for Agenda Packets - Staff requested the board's approval to reinstate charging interested parties \$65 per board packet due to the increased costs of mailing and labor. Dr. Ariane Terlet questioned the rationale for charging a yearly fee for the anticipated four meetings per year when there have been incidence of more meetings. Therefore, there should be an increase in fees for the added meeting packets. The Board needs to charge a reasonable fee for packets provided to the public and an invoice needs to reflect that policy. Letters will be sent to all packet recipients verifying their continued desire to receive board packets and the costs involved.

It was m/s/c (Pinkerton/Terlet) to charge a reasonable amount for each board meeting packet provided to interested parties and direct staff to create an invoice reflective of that amount.

Update on Strategic Plan Development - Budget Analyst, Ms. Irene Gonzales, informed the board that the Department of General Services' Master Services Agreement process was used as a more expeditious route in obtaining a Strategic Plan Consultant. The proposal was sent to 7 small businesses and 2 bids were returned. Ms. Mitchell explained that the bids for full development of a Strategic Plan were higher than anticipated. Staff is investigating the possibility of utilizing a consultant on a limited-use basis to stay within guidelines of the department policy. Dr. Ariane Terlet asked about the possibility of the board having a contract by January. Ms. Mitchell advised the board that they could not anticipate meeting that timeframe due to the 60-day processing time for contracts. Staff is hoping to have a consultant selection made by the January 2003 board meeting.

AGENDA ITEM 6 Enforcement Program

Mr. Michael Pinkerton, Chair of the Enforcement Committee, informed the board of his involvement with meeting with Ms. Lynn Thornton, Chief of Enforcement and Mr. Ben Frank, the Enforcement Monitor, to address the deficiencies outlined in the Enforcement Monitor's Report. Mr. Pinkerton stated that the sessions he has had were very productive and engaging. A master schedule has been developed with action plans to address each of the recommendations in the Monitor's report. Mr. Frank presented a general overview of the report to the board stating that some items are in progress and others have been deferred to the following year pending relief of budget and staff shortages. He stated that as cases are worked down we should see dramatic improvement in the amount of time in investigation of complaints. There is no evidence at this point that cases are not being properly investigated. Mr. Frank acknowledged the substantial progress made by staff to correct the issues outlined in his report.

Ms. Lynn Thornton informed the board that the Sunset Report, due to the Legislature the following week in response to the Enforcement Monitor's Report, was complete and will be delivered to the board members by next week. She noted that a contingency plan for investigations has been developed for the board's review. Some changes occurring relate to the referral of certain types of cases to other agencies, such as the Department of Justice and the Department of Insurance for fraud cases, which will free up the board's investigators for other cases. While Mr. Pinkerton acknowledged this was not the perfect scenario, this move would not prevent the Dental Board from moving against the practitioner after the other agency declares its findings. Ms. Thornton also thanked Mr. Frank for his on-going assistance and professional attitude.

AGENDA ITEM 7 Budget Report

Budget Analyst, Ms. Irene Gonzales, provided a brief overview of the board's fund condition and 1st quarter budget expenditures. Specific items of budget impact were discussed including the impact of Licensure by Credential and cost factors in producing an Occupational Analysis. Dr. Chester Yokoyama and Dr. George SooHoo commented on the clarity of having a legislative mandate without proper funds and staff available to operate.

At this time, Senator Liz Figueroa addressed the Dental Board with respect to the budget as a whole and the responsibility of the board to remember its primary purpose for being in existence. Regardless of personnel problems and funding shortages, the process must continue. She further stated that there should be no Legislation where the board is not involved when it impacts operations and budgets.

AGENDA ITEM 8 Legislative Update

Legislation Coordinator, Mr. Errol Chisom, was present to answer questions regarding pending legislation.

- Dr. George SooHoo asked the effective date of AB 1045 (Firebaugh) and where the guidelines for this bill were at this time. Mr. Chisom stated the effective date was 1/1/03 and that the board, in conjunction with the Medical Board would have to develop the guidelines, although this was not delineated in the legislation.
- AB 1026 (Orpeza) - Dr. Chester Yokoyama asked who was responsible for

establishing the credentialing requirements that an organization must have in order to be recognized as a bona fide organization. Mr. Chisom informed the board that he would be working with CDA to establish these requirements.

Ms. Gladys Mitchell stated that in the future, staff will include a brief summary for each bill so that the board members will know what progress staff has made (i.e., scheduling meetings) on each bill.

AGENDA ITEM 9 Dental Referral Programs

Dr. Michael Grossman, representing First Dental Health, delivered a presentation to the board regarding dental discount programs and requested the board to create a permit program for this type of dental healthcare environment. The Knots/Keene Act does not apply to this type of care provider. As such, these providers should be allowed to advertise as a discount company rather than a dental office. The State's Attorney General supports the concept and reportedly recommended the Dental Board get involved. This item was informational only and no action was taken.

AGENDA ITEM 10 Dental Material Fact Sheet Committee Update

Dr. Chester Yokoyama presented an overview of the informational hearing held November 7, 2002. He stated that, in his opinion, there was enough evidence presented to warrant the fact sheet committee to meet and review the information received from the hearing. He would come back to the board with recommendations on a consumer friendly version of the existing fact sheet.

Dr. William Heisler of Loma Linda University, commented on how well the informational hearing went and requested the board to now answer the following questions in relation to the existing fact sheet:

1. Is the current Dental Materials Fact Sheet inaccurate in any way?
2. Does the current fact sheet leave out any important information?
3. Is the fact sheet bias toward or against any material?
4. Is the current fact sheet misleading?

Ms. Katie Dawson of CDHA asked Dr. Yokoyama to clarify that his assessment on the outcome of yesterday's hearing was the opinion of the committee or his own personal opinion. Dr. Yokoyama restated that his statement was his personal opinion.

AGENDA ITEM 11 Diversion Evaluation Committee Liaison Report

Committee Chair, Ms. La Donna Drury-Klein provided a brief summary of the report provided in the packet as information only. The 1st quarter statistics were also provided in the packet as information only.

AGENDA ITEM 12 Enforcement Committee Report

Committee Chair, Michael Pinkerton, reported the following outcome of the enforcement committee meeting held November 7, 2002.

- The minutes of the August 8, 2002 Enforcement Committee Meeting were approved with minor changes.

- Special Permits for Majed Moawad and Radhika Chigurupati were approved.
- The following General Anesthesia/Conscious Sedation Evaluator applications were approved (immediately) for Michael Mashni, Cyrus Mozayan, Tim Silegy, and Leonid Tolstunov. Conditional approval was granted for Michael Clark, Schahrokh Fatehi, Fred Hammond, Scott Podlesh, and Nojan Talebzadeh contingent upon completion of the Evaluator Training being held in December 2002.

The committee voted to delegate evaluator appointments to the Executive Officer.

- Additions to the Cite and Fine Table were approved in principle, but requested that staff add the fine amounts and resubmit to the board for approval.
- Unlicensed Dental Assistants – After a lengthy discussion, the committee requested that the board president appoint Mr. Pinkerton and Ms. LaDonna Drury-Klein to work with COMDA on their reconsideration of the Permit to Practice initiative. Dr. Kaye accepted Mr. Pinkerton’s proposal and asked Mr. Pinkerton and Ms. Klein to meet with COMDA at their next scheduled meeting.

It was m/s/c (Hundley/Gordon) to accept the report as given.

AGENDA ITEM 13 Examination Committee Report

Committee Chair, Dr. George SooHoo, reported the following outcome of the examination committee meeting held November 7, 2002.

- The minutes of the August 8, 2002 Examination Committee Meeting were not available during the committee meeting. They were however, passed out during the full board meeting and were approved as written.
- 2003 Examination Schedule - It was m/s/c (Gordon/Hundley) to accept as presented.
- Appointment of Dental Examiners – It was m/s/c (Gordon/Hundley) to approve all applications. Dr. Benjamin Braziel’s application was not considered until additional information was received.
- Resolution to Establish RDHAP Licensure Fee – It was m/s/c (Hundley/Terlet) to accept the fee as requested by COMDA Committee Chair, Ms. Rhona Lee.

It was m/s/c (Gordon/Hundley) to accept the report as given.

AGENDA ITEM 14 COMDA Report

Committee Chair, Ms. Rhona Lee, presented the following:

14.1 – COMDA Supplemental Sunset Report which has been submitted to the

Joint Legislative Sunset Review Committee (JLSRC) reflects COMDA's positions on the various recommendations contained in the independent consultant's study on auxiliary scopes of practice submitted to the Legislature in September. Ms. Lee briefly described seven of the major issues in which COMDA agrees and the two in which they disagree.

She reported that COMDA is in agreement with the following report recommendations:

- Placing all auxiliary scopes of practice into statute.
- Scopes of practice for the EF and RDA should be expanded to include such duties as pit and fissure sealants for the RDA and the placement of permanent fillings using direct filling materials for the EF.
- The required level of dentist supervision of duties be changed so that it is not so prescriptive for the RDA and EF categories, but that it be retained for the DA category. Instead of having duties delineated as direct or general, allow the supervising dentist to determine the level of supervision required for each licensed auxiliary based on their individual skills and abilities.
- The RDHAP should be allowed to employ a RDAs and EFs, in addition to the current law which allow them to employ DAs.
- Eliminate the requirement that all educational programs for EFs and RDHAP category must be affiliated with a dental school.
- The written examination requirement for RDHAPs should be eliminated considering that considerable other requirements that they must meet to obtain licensure.
- Patient safety courses should be mandated and required for unlicensed DAs, to include infection control, CPR and California Law within 120 days of employment.

The only two issues with which COMDA disagrees are:

- First, current law provides that a dentist may only employ two EFs. However, COMDA feels that is an unnecessary barrier to care and believes the prohibition should be eliminated in keeping with the study's overall philosophy that the dentist should be responsible for determining the appropriate levels of auxiliary supervision.
- Secondly, current law requires a written prescription for the RDHAP category, which requires that a patient of record must be seen by a physician or dentist prior to an exam and prior to being seen by a RDHAP. COMDA believes this

is an unnecessary barrier that has been documented. Based on historical background and lack of incidents reported, COMDA feels this requirement should be eliminated.

Ms. Lee noted that these were not the only issues addressed in COMDA's report, but only highlights some of the more significant issues. It was m/s/c (Klein/Baron) to support all of COMDA's position's on the independent consultant's report as reflected in COMDA's Supplemental Sunset Report on Auxiliary Scopes of Practice. (Gordon & Yokoyama abstained)

14.2 – Recommendation to Amend CCR Sections 1071.1, 1073.1 and 1073.2 to Eliminate Dental School Affiliation Requirement for EF and RDHAP Educational Programs

COMDA recommended that these sections be amended to eliminate the dental school affiliation requirement for EF and RDHAP educational programs. After discussion, it was acknowledged that eliminating the requirement for EF educational programs would require legislative change rather than simply a regulatory change.

It was m/s/c (Klein/Terlet) to set for regulatory hearing changes to section 1073.2 to eliminate the dental school affiliation requirement for RDHAP educational programs.

14.3 – Recommendation to Amend CCR Sections 1085, 1086, 1087 and 1089 to Change DA, RDA, and EF Allowable Duties and Supervision Levels

COMDA recommended that the board pursue changes to the regulations governing the duties and supervision levels for DAs, RDAs and EFs, so that the changes can become effective earlier than might be possible through legislation.

It was m/s/c (Klein/Hundley) to pursue such regulatory changes.

14.4 – Recommendation to Repeal CCR Section 1088 Governing RDH Duties and Settings

COMDA recommended that CCR Section 1088 be repealed as it is superceded by the new laws.

Legal Counsel, Ms. Norine Marks, advised the board it would be easier and faster to do a section 100 change after January 1, 2003 instead of a regulatory change. COMDA was in agreement with this recommendation and withdrew their initial request.

It was m/s/c (Terlet/Klein) to direct staff to start a section 100 change.

14.5 – Approval of Auxiliary Educational Programs

COMDA recommended approval of the following:

Radiation Safety Courses

1. Santa Clara County ROP- South, Gilroy
2. Desert Career College, Palm Springs Program
3. Tri-Cities Regional Occupational Center

Coronal Polishing Courses

1. Connie Hunt, RDA, S. Lake Tahoe
2. Coastline Regional Occupational

It was m/s/c (Terlet/Klein) to approve.

AGENDA ITEM 15 2003 Board Meeting Dates

The following dates were adopted:

Jan 30-31, 2003 – Sacramento

Apr 3-4, 2003 – San Diego

Jul 10-11, 2003 – San Francisco

Nov 6-7, 2003 – Los Angeles

AGENDA ITEM 16 Licensure by Credentials Update

Dr. George SooHoo provided a handout showing other states processes on LBC. PBIS Credentialing Agency provided notebook binders with information on their services and fees. Dr. SooHoo asked that the members take time to digest the information provided and table this issue until a future meeting.

Drs. Gary Greenberg and David Duguid addressed the board regarding timeframe of implementing the LBC program. Dr. Duguid was told in May 2002 that the program would be up and running by November of this year. To date, the program is still not in place due to problems with the regulatory package. Dr. Duguid sold his practice in Michigan in order to take over Dr. Greenberg's practice in San Diego. Dr. Greenberg is being forced to retire due to medical reasons. Dr. Duguid has sold his practice and moved to San Diego under the pretense that he would be getting his CA license by credentials no later than November.

Regulation Coordinator, Mr. Errol Chisom, informed the board that the regulatory package was sent to the Legal Office of the Department of Consumer Affairs August 13, 2002. He stated that the package has been held up because of problems with the fiscal analysis. Budget Analysis, Ms. Irene Gonzales, informed the board that according to her budget liaison the packet was being forwarded as of November 6, 2002.

Dr. Kaye assured Drs. Greenberg and Duguid that the board would do everything possible to expedite this process. Dr. Greenberg requested that Dr. Duguid be given the application to start the background process while the package is still moving forward.

AGENDA ITEM 17 Regulatory Hearings

A regulatory hearing was held at 1:30pm to amend 16 CCR §§ 1070, 1070.1 and add CCR 16 § 1072.2 – RDA Educational Programs. Specifically, the proposed changes formalized the standards contained in the program application packet and accompanying guidelines, which have been used for many years. Without comment, the board unanimously voted to adopt the proposed regulatory language.

A second regulatory hearing was noticed to amend 16 CCR § 1088 to Allow RDHs to Perform Brush Biopsies. However, no action was taken on this issue once Ms. Karen Wyant informed the board that this issue was superseded by SB 2022, placing hygienists' duties into statute.

AGENDA ITEM 18 Public Comment

Director, Kathleen Hamilton addressed the board to respond to questions the board had in regards to the EO Selection and the Department's role in that process.



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EXAMINATION COMMITTEE MEETING
November 8, 2002
Los Angeles, CA

MINUTES

Members Present:

George SooHoo, DDS, Chair
Newton Gordon, DDS
LaDonna Drury-Klein, RDA
Ariane Terlet, DDS
Chester Yokoyama, DDS

Member Absent:

Patricia Osuna, RDH

Staff Present:

Gladys Mitchell, IEO
La Rita Abdul-Rahman, Secretary
Norine Marks, Legal Counsel
Don Chang, Legal Counsel

The meeting was called to order at 3:30 pm. All members of the committee except Ms. Patricia Osuna were present and a quorum was established.

AGENDA ITEM 3 - Approval of Examination Committee Minutes

The minutes of the August 8, 2002 Exam Committee Meeting were accidentally left out of the board packets. As a result, staff would have the minutes available for approval during the full board meeting.

AGENDA ITEM 4 - Proposed 2003 Examination Schedule

The proposed 2003-examination schedule indicates that 8 Dental Licensure Examinations will be held to accommodate 1650 candidates and 3 Restorative Technique Examinations that will accommodate 750 candidates.

The 2003 schedule was accepted as presented.

AGENDA ITEM 5 - Recommendation on Appointment of Dental Examiners

The North and South Chief Examiners submitted 21 applications for approval.

It was m/s/c (Yokoyama/Gordon) to approve all applicants as new Dental Examiners, except for Benjamin Braziel.

AGENDA ITEM 6 - Recommendation to Establish RDHAP Licensure Fee

COMDA Committee Chair, Ms. Rhona Lee, requested the committee to accept the proposed resolution that would establish a fee of \$80 for RDHAP licensure in addition to the \$20 application fee.

It was m/s/c (Gordon/Terlet) to accept the resolution as presented.

PUBLIC COMMENT

A representative from the Duggan Institute inquired if the Restorative Technique Exam would be extended beyond 2003. Committee Chair, Dr. George SooHoo stated he had no knowledge of an extension.

Dr. Ruth Kenworthy, a candidate who has taken the CA Exam three times and failed, asked the committee about alternative remediation programs for US trained candidates. She also requested to remediate only those portions of the exam that she did not pass and not the entire program.

The committee meeting adjourned at 4:10 pm.