



**Dental Board of California Meeting
November 9, 2009
Los Angeles, CA**

Members Present:

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

Members Absent:

Stephen Casagrande, DDS, Secretary

Staff Present:

Richard DeCuir, Interim Executive Officer
Nancy Butler, Acting Enforcement Chief
Lori Reis, Complaint & Compliance Unit Manager
Dawn Dill, Licensing & Exam Unit Manager
Sarah Wallace, Administrative Analyst
Donna Kantner, Legislative & Regulatory Analyst
Jocelyn Campos, Enforcement Coordinator
Jessica Olney, Examination & Licensing Analyst
Karen Fischer, Licensing Analyst
LaVonne Powell, DCA Senior Staff Counsel
Kristy Schieldge, DCA Senior Staff Counsel

President McCormick called the meeting to order at 8:10 a.m. and established a quorum.

Public Comment

Kit Neacy representing a number of insurance companies asked whether or not the Board's website was up-to-date with regard to posting disciplinary actions. As a point of order, Legal Counsel indicated there could be no discussion about this item since it was not properly noticed and referred the question to staff. There was no additional public comment.

The Board moved in to closed session at 8:15 am to review disciplinary matters and litigation.

Returned to Open Session at 9:30 am

Agenda Item 1: Recommendation from the Full Board to Adopt the Amendments to Title 16, CCR Section 1018 (Disciplinary Guidelines Regulations)

President McCormick noted that this rulemaking file will expire on January 9, 2010 if no action is taken by the Board, and a number of comments have been received in the document from the California Dental Association (CDA) contained in the Board's packets along with the proposed amendments and staff recommendations regarding each of CDA's comments. Legal Counsel Powell advised the Board that each comment must be accepted or rejected by the Board and contained in the final rulemaking file. Dr. Whitcher felt that CDA's comments should be addressed each in turn. Ms. Powell noted that the staff document prepared by Ms. Kantner contains both CDA's comments and staff recommendations for each comment. Interim Executive Officer DeCuir noted that he and Ms. Kantner and Enforcement Chief Nancy Butler worked together on the staff response to comments from a public protection perspective. Dr. Whitcher suggested that the staff document be used as a guide. President McCormick agreed, asking Ms. Kantner and Ms. Butler to present the material. Ms. Kantner noted that any modifications made to the document must be noticed for 15 days and any negative comments must be addressed by the Board.

Legal Counsel Powell began with the first comment from CDA, asking that the term "Revocation stayed, (number of years) probation" be eliminated from all penalties, adding that this language is necessary in order to do a petition to revoke a probation if necessary. Staff feels strongly that from both a legal and enforcement perspective, this language must be retained. Legal Counsel Schieldge noted that the Board needs to legally maintain jurisdiction over the licensee or it cannot continue to monitor probation. She continued that this language is consistent throughout the department and necessary for enforcement of probation terms and conditions. Dean Chalios, CDA, felt this is the biggest issue. Dr. Olinger asked if it is accurate that every single other board uses this specific language. Ms. Schieldge responded that in her experience, every board within the Department of Consumer Affairs uses this language as a mechanism to enforce probationary terms. Vice Chair Bettinger asked if a specific page could be added to the Board's website for insurance companies to explain this language, since insurance companies tend to cancel insurance on a licensee whose license is revoked even though the revocation is stayed. Alison Sandman, CDA, believed that Sections 1680 and 1671 allow the Board to maintain its authority over a licentiate who is on probation, and felt it was a violation of a probationer's due process. She also felt this would be preferable in attempting a settlement, since this term has a negative connotation. Ms. Powell respectfully disagreed, recommending that this Board not be the one board to remove this specific language from its Disciplinary Guidelines. Dr. Dominicis agreed that this term might be a hindrance to a settlement. Dr. Earl Johnson, California Association of Orthodontists, felt that the language is awkward. Vice Chair Bettinger asked if there were a way to reverse the text so that only the probation reflected on the website. Legal Counsel Schieldge said that the order must be in this format to have the ability to monitor and subsequently revoke a license. President McCormick asked if it were possible for the judge to override the stipulation. Ms. Powell stated that this is a standard condition in all orders. Dr. Olinger felt this is a legal convenience that has numerous other effects, including the perception that a license is revoked when the licensee is on probation. Ms. Powell noted that she had previously indicated to Mr. Chalios and Ms. Sandman that a legislative solution would be required, a statutory change to amend the law to state "violation of a probationary condition constitutes unprofessional conduct." She added that she would advise against making such a drastic departure from all other healing arts boards with these regulations. Mr. DeCuir noted that it is the Board's responsibility to set policy. M/S/F (Burton/Le) to accept staff's recommendation that the language be retained regarding revocation stayed. Dr. Olinger spoke for greater fairness and greater flexibility, adding that current guidelines do not allow the Board the necessary leeway to do what is fair. Dr. Le did not feel that this is the time to deviate from the practices of other boards. Ms. Burton noted that

absent this language, the Board has no way to go back and revoke the license. Ms. Sandman noted that a violation of probation by not filing quarterly reports would necessitate a hearing to determine what action is necessary, however this rulemaking process is a mechanism to clarify that violation of probation is grounds for revocation, due process requirements are met and the Board still has the ability to seek revocation of the license. Legal Counsels Powell and Schieldge disagreed with this interpretation. Mr. Chalios requested the citations supporting staff's recommendation to retain the language "revocation, revocation stayed, probation for (number of) years. A roll call vote was taken with Mr. Baker, Dr. Bettinger, Ms. Burton, Ms. Downing, Ms. Forsythe, Dr. Le, Dr. McCormick, and Dr. Whitcher voting to accept staff's recommendation to retain the terms. Dr. Dominicis and Dr. Olinger voted against staff's recommendation.

Ms. Butler reported that CDA recommended that some reduction in time of certain minimum penalties should be made to reflect the lesser violations within a particular type of offense, and these accord with the Dental Board's current guidelines as well as the disciplinary guidelines used for similar offenses by the Medical Board and the Board of Registered Nursing, and that Board staff recommends acceptance of this recommended change. Legal Counsel Powell asked which violations this pertains to; Ms. Sandman noted that these appear throughout the document.

Ms. Butler noted that CDA recommended that the paragraph preceding the "Introduction" be moved to the end of paragraph 2. Ms. Sandman felt that this paragraph further clarifies the intent. The Board's consensus was to accept staff's recommendation to accept this change.

CDA recommends, on page 2, comment 2 to add "and to the extent not inconsistent with public protection, disciplinary actions shall be calculated to aid in the rehabilitation of the licensee." Ms. Powell noted that the Board's charge is protection of the public, not rehabilitation of the licensee. Dr. Olinger felt this isn't a big deal either way. The Board voted to accept staff's recommendation to accept this change M/S/P (Downing/Baker).

Ms. Kantner reported that CDA recommended that on page 2, paragraph 3, line 3, the text be amended to add "if certain terms and conditions of practice are followed", and staff recommends rejection of this comment. The Board voted to accept staff's recommendation to reject this comment since public protection outweighs the potential effect to the disciplined licensee.

Ms. Butler reported that CDA recommended that on page 3, line 10 "Factors to be Considered", the word "overall" be stricken, since there may be minor offenses not related to the practice of dentistry or offenses remote in time, which should not reasonably be considered in disciplining a licensee, and that staff recommends acceptance of this recommended change. The Board's consensus was to accept staff's recommendation.

Ms. Kantner reported that CDA recommended on page 3, line 14 of the Guidelines, striking the word "mitigation evidence" and replacing it with "Evidence of Rehabilitation", and staff recommends acceptance of this change. The Board's consensus was to accept staff's recommendation.

Ms. Kantner reported that on page 4, following the section "Evidence of Rehabilitation" CDA recommends, and staff recommends acceptance, of the following text to be added to clarify the distinction between evidence of rehabilitation and mitigation evidence:

Mitigation Evidence

- length of practice
- no prior discipline

- illness/death of family member or other personal circumstances affecting performance at the time of the incident
- early admissions

The Board's consensus was to accept staff's recommendation to accept this comment and include this text.

Ms. Butler reported that CDA recommends that on page 4, lines 1-2, (Other situations in Revocation is Recommended the following text be added for instances in which there is good cause for the licensee not to appear, such as illness or out of the country: "following notice to the licensee and an opportunity to be heard regarding failure to file or to appear". Staff recommends rejection of this comment. Ms. Powell explained that the process is set in the Administrative Procedures Act (APA) and affords the licensee the opportunity to present such evidence, noting that the Board does not have the power to set aside the APA. The Board's consensus was to reject CDA's recommendation.

Ms. Butler reported that on page 4, line 4 "Other Situations in which revocation is recommended, CDA recommends that "recent" be added to avoid the introduction of evidence that is remote in time, and that staff recommends rejection of this change since the term "recent" is ambiguous and lacks definition. The Board agreed by consensus to reject this comment.

Ms. Kantner reported that CDA finds the language on page 6 is confusing. She noted that this comment to change "revocation, revocation stayed" had been decided in earlier discussion today by the Board, who voted to retain the language.

Ms. Kantner reported that CDA comments that on page 7, Section (1) Obey all Laws, line 4, 72 hours is an unreasonably short time for reporting when a licensee might be incarcerated or dealing with the immediate repercussions of arrest and conviction, citing Section 802.1 which allows physicians 30 days to report such occurrences. She noted that staff recommends rejection of this comment, with a change to 7 calendar days rather than 72 hours, to provide a reasonable amount of time to notify the Board without jeopardizing public protection. She stated that some misdemeanor offenses are serious violations. The Board voted to accept staff's recommendation.

Ms. Butler reported that CDA comments regarding page 9, Section (5) "Meetings and Interviews, requests that "upon reasonable notice" be added to "Respondent shall appear in person . . ." and staff recommends rejection of this added text as vague and ambiguous. The Board's consensus was to reject this comment.

Ms. Butler reported that CDA comments on page 9, Section (6) "Status of Residency, Practice or Licensure Outside of State" adding "Any Respondent disciplined under the Dental Practice Act or another state discipline may petition for modification or termination of penalty if 1) the other state's discipline terms are modified, terminated or reduced; or 2) if at least one year has lapsed from the date of the California discipline", and that staff recommends acceptance of part 1) and rejection of part 2) of this comment. Ms. Powell stated that regulation may not conflict with statute, and this amendment would be inconsistent with Section 1686. Ms. Sandman did not believe there was a conflict. The Board voted to reject this comment M/S/P (Downing/Olinger).

Ms. Butler reported that CDA comments on page 10, Section (8) Cost Recovery, line 9, that in cases where the respondent has filed for bankruptcy, the Board cannot override the bankruptcy

court, and requests that “the filing of bankruptcy” be stricken from this section. She stated that staff recommends rejection, staff believes that the filing of bankruptcy does not relieve the probationer of an obligation to repay the Board. Ms. Powell noted that the Board has no jurisdiction over a federal bankruptcy court. The Board’s consensus was to accept the comment.

Ms. Kantner reported that CDA comments on page 13, Item (12) “Continuance of Probationary Term/Completion of Probation”, lines 2-3, for clarity, there are no stayed penalties. She noted that this comment has been previously voted on and was rejected by the Board.

President McCormick suggested in the interest of time, taking staff’s recommendation to accept CDA’s comments to page 14, Item (15) “Suspension”, line 3, page 18, Item (18) “Supervised Practice”, line 4 and line 7. It was the Board’s consensus to accept these three comments.

Ms. Kantner reported that CDA comments to page 18, paragraph 4, line 4 to amend the text to add “within five days provide to the Board the name and qualifications of a new proposed supervisor. The Board will advise the respondent within two weeks whether or not the new supervisor is approved. If Respondent fails to obtain approval of a replacement supervisor within 60 days of the rejection or unavailability of the supervisor.” and also “Upon written recommendation by the supervisor no earlier than one year after the effective date of this order, this requirement may be terminated by the Board.” Ms. Kantner noted that staff recommends rejection of this comment, and Ms. Powell and Ms. Schieldge noted that this text conflicts with Section 1686 and the inability of the Board to delegate this function under the APA. The Board voted to accept staff’s recommendation to reject this comment.

Ms. Kantner reported that staff recommends acceptance of CDA’s comments that on page 19, Item (19) “Restricted Practice” and Item (20) “Third Party Chaperone”, these two sections overlap and the language should be separated into two distinct conditions; one category for restricted practice and another category for third party chaperone. Ms. Sandman suggested striking the portions of Section (19), lines 5-9, that exist in (20), and striking paragraph 2 on the same page. The board voted M/S/P(Ollinger/Downey) to accept staff’s recommendation to accept the comment.

Ms. Butler reported that CDA recommends that on page 19, Item (19) “Restricted Practice” to strike “(inability to treat female/male/minor without presence of third party) and add “by posting a written notification visible to all patients before they receive any dental treatment” and staff recommends rejection of this recommendation since all patients have the right to know the reasons for the restriction of a licensee’s practice. The Board voted to reject staff’s recommendation and to accept the comment as it places an onerous burden on the licensee to notify all current and prospective patients in writing of practice restrictions M/S/P(Ollinger/Dominicis).

Ms. Kantner reported that CDA recommends that on page 20, Item (20) “Third Party Chaperone” be a separate requirement. Staff recommends rejection of this comment as posting a notice in the dental office does not provide adequate patient protection. The Board’s consensus was to accept staff’s recommendation, with the addition of “prior to treatment of affected patients” to the text, to clarify that only affected patients, such as females or minors, need notification prior to treatment.

Ms. Kantner reported that CDA recommends, and staff recommends acceptance of this comment, that on page 20, Item (20) “Third Party Chaperone”, paragraph 5, line 1, “misconduct was not serious” be struck as ambiguous and “has shown evidence of rehabilitation and he is no longer considered a danger to patients or” be added, and in line 2 of the same paragraph, “the misconduct was serious or involved more than one patient” be struck and “respondent is still

considered a danger to patients” be added. Schieldge noted that this text is repetitive and disjunctive. The text was clarified to make the requested strikeouts and add “has shown evidence of rehabilitation and is no longer considered a danger to patients.” In the following line, the strikeout of “the misconduct was serious or involved more than one patient” and addition of “respondent is still considered a danger to patients,” The Board’s consensus was to accept staff’s recommendation and CDA’s comments as modified.

Ms. Butler reported that CDA recommends the omission of paragraph 6 on page 20, since it is covered in prior item (19). She noted that staff recommends rejection of this recommendation, since the proposed language clarifies the rationale for the requirement of a monitor. The Board’s consensus was to accept staff’s recommendation to reject this comment.

Ms. Butler reported that CDA recommends that “involving the practice of dentistry” be added to paragraph 3, page 22, Item (22) “Community Service”, since it is irrelevant if not related to the practice of dentistry. Board staff recommends rejection of this comment since it would restrict the board’s ability to mandate community service outside the dental field. She noted that this may be necessary in the case of ethics violations or practice restrictions. The Board’s consensus was to accept staff’s recommendation to reject this comment.

Ms. Butler reported that CDA comments, and staff recommends acceptance of the comment that in paragraph 3, line 12 of page 23, Item (23) “Psychological Evaluation” text be added to specify “unless excused by the Board in its sole discretion.” The Board’s consensus was to accept staff’s recommendation and this comment.

President McCormick asked if there was consensus on staff’s recommendation of acceptance of CDA’s comment that paragraph 4 on page 23, Item (23) “Psychological Evaluation” to be moved to Item (24) because it relates to psychotherapy. The Board’s consensus was to accept staff’s recommendation and this comment.

Ms. Butler reported that CDA comments regarding paragraph 2, line 1 on page 25, Item (25) “Physical Evaluation” that “there are often cases where the Respondent can practice safely in the presence of certain restrictions, as evidenced by other terms which acknowledge restricted practice” and suggested deleting the word “safely” and adding “with or without restrictions.” She reported that staff recommends rejection of this comment, as deletion of the word “safely” and inserting “without restrictions” does not maintain maximum public protection. The Board’ consensus was to retain the word “safely” and accept the added text “with or without restrictions.”

Ms. Kantner reported that CDA comments that on page 26, Item (26) “Diversion”, line 14, that the word “reasonably” be added to “requirements imposed by the DEC.” She noted that staff recommends rejection of this comment, as being vague and ambiguous, with the potential to compromise public protection. The Board’s consensus was to accept staff’s recommendation to reject this comment.

Ms. Kantner reported that CDA comments that on page 26, Item 26 “Diversion”, line 16, that the text “without good cause” be inserted before “shall constitute violation of probation.” She reported that staff recommends this comment be rejected as this text is difficult to define and impossible to enforce. The Board’s consensus was to accept staff’s recommendation and reject the comment.

Ms. Kantner reported that on page 27, Item (27), “Biological Fluid Testing”, CDA comments that there is an automatic presumption against a licensee if a urine sample is out of range or too diluted. Staff recommends acceptance of CDA’s suggested modifications to strike this text. Legal

Counsel Powell felt this would be problematic, the Board could not require that they cease practice if this text is adopted. The Board's consensus was to reject this comment for consistency.

Ms. Butler reported that CDA recommends, and staff recommends acceptance of this comment, insertion at the end of page 27, Item (27), "If it is determined that Respondent altered the test results, the result shall be considered an admission of positive urine screen and constitutes a violation of probation." Legal Counsel recommended further adding "and cease practicing." The Board's consensus was to accept this comment with counsel's suggested addition.

Ms. Butler reported that CDA comments that on page 28, Item (28) "Abstain from the Use of Alcohol, Controlled Substances, Dangerous Drugs" that "there is no reason for automatic suspension without a hearing, and the Board can always get an emergency order." CDA suggests striking the text and replacing with "A positive drug screen for any substance not legally authorized constitutes a violation of probation." Ms. Butler noted that an Emergency Order can take 30 days or more, and if the licensee is allowed to practice during this time it would compromise public protection. The Board's consensus was to accept staff's recommendation to reject this comment.

Ms. Kantner reported that CDA comments that on page 30, Item (30) "Ethics Course" existing text "encourages licensees to undertake rehabilitation prior to the Board's decision" proposing the addition of "An ethics course taken after the acts that gave rise to the charges in the accusation, but prior to the effective date of the Decision may, in the sole discretion of the Board, be accepted towards the fulfillment of this condition." She noted that staff recommends acceptance of this comment and the modification. The Board's consensus was to accept staff's recommendation and the added text.

Ms. Kantner reported that CDA comments that on page 31, Item (31), "Billing Monitor", line 3 "determines that less time is sufficient for compliance" and "to approve a reduction of the number of hours of review" be struck, and replaced by "recommends that no further monitoring is needed" and "to exercise its sole discretion and terminate this requirement." She noted that staff recommends rejection of this comment as this would prohibit the Board from reducing hours and only allow only termination. Legal Counsel Powell noted that this modification is unnecessary as the terms are specified in the APA process. The Board voted M/S/P(Olinger/Bettinger) to reject this comment and accept staff's recommendation.

Ms. Kantner reported that CDA comments that on page 34, "Recommended Penalties" CDA asks that the term "revocation, revocation stayed" be removed from all penalties. Ms. Burton noted that the Board has already voted to retain the text "revocation, revocation stayed".

President McCormick clarified that in the Board's consideration of all CDA's following comments relative to penalties, "revocation" or "revocation stayed" not be considered, as the Board voted to retain these terms. She noted that CDA comments on page 37, Section 650.2 "Patient Referral Service- Failure to Disclose", Section 651 "False, Misleading or Deceptive Public Communication", Section 654.1 "Referral of Patients to Laboratories Without Disclosure of Beneficial Interest", and Section 654.2 "Charges, Billings, Solicitations or Referrals Without Disclosure of Beneficial Interest", CDA comments that "there is no reason given for increasing the minimum penalties for these violations", recommending that the existing two year probationary terms for these violations be maintained. Staff recommends and the Board's consensus was to accept these comments.

Ms. Kantner reported that CDA comments that on page 38, Section 726, "Act of Sexual Abuse or Misconduct with Patient" the Medical Board has issued disciplinary orders that result in a five year probation with standard and additional conditions noted. Dr. Olinger felt that there are times that

the guidelines can be used to punish where not warranted. Legal counsel noted that there is always a hearing before an administrative law judge. CDA proposes adding language to specify “five years probation for consensual sex for one patient” and impose “1. Standard conditions (1-14) 2. Ethics Course (30) 3. Professional Boundaries program 4. Psychiatric Evaluation 5. Third Party Chaperone 6. Suspension, 60 days, additional condition, if warranted 7. Psychotherapy, additional condition, if warranted 8. Restricted Practice, additional condition, if warranted”. The Board voted M/S/P (Bettinger/Olinger) to accept this comment and add the text.

Ms. Kantner reported that CDA comments that on page 43, Section 1670, “Gross Negligence, Incompetence, Repeated Acts of Negligence”, “a minimum should be a minimum, not a range” proposing that “to five” be stricken from the text. She noted that staff recommends retaining the language and not reducing the penalty. The Board’s consensus was to reject staff’s recommendation and accept CDA’s comment and the added text.

Ms. Kantner reported that CDA comments and staff recommends acceptance of added text “as an additional condition, if warranted,” to page 44, Section 1670, line 4 “Community Service, 40 hours per year”. The Board’s consensus was to accept this comment and the added text.

Ms. Kantner reported that CDA comments that on page 45, Section 1680(b), “Employment of Student, Suspended or Unlicensed Dentist”, there could be “mitigating circumstances justifying a lesser penalty.” CDA suggests striking “five” and replacing it with “three years probation” and adding “Suspension, 60 days” to the text “as an additional condition, if warranted” to the text. The Board voted M/S/P (Olinger/Bettinger) to accept this comment and modify the text.

President McCormick noted that CDA comments that on page 46, Section 1680(c), “Aiding or Abetting Unlicensed Practice” there could be mitigating circumstances and suggests that “five years” be replaced by “three years” probation and that suspension have “as an additional condition, if warranted” for consistency. The Board’s consensus was to accept CDA’s comments and modify the text.

President McCormick noted that CDA comments that on page 46, Section 1680(d), “the rationale is the same as for 1680(c)” to strike “five” and replace it with “three years probation” and add “Suspension, 60 days” to the text “as an additional condition, if warranted” to the text. The Board’s consensus was to accept CDA’s comments and modify the text.

President McCormick noted that CDA recommends striking “seven” and replacing with “five” years probation on page 46, Section 1680(e). The Board’s consensus was to accept CDA’s comment and modify the text.

President McCormick noted that CDA comments that on page 46, Section 1680(f), no reason is given for increasing the minimum penalty, recommending three (3) be struck and replaced with two (2). Staff recommends acceptance of this comment. The Board’s consensus was to accept the comment and modify the text.

President McCormick noted that CDA comments that on page 47, Section 1680(g), this text is the “same as Section 650 above” and “for consistency, include both under the same heading.” Staff recommends acceptance of this comment. The Board’s consensus was to accept the comment and modify the text.

President McCormick noted that CDA comments that on page 48, Section 1680(h), this text is the “same as Section 651 above” and “for consistency, include both under the same heading.” Staff

recommends rejection of this comment, as while the penalties are the same, the code violations are different, so the Board needs to retain the language to enable Board staff to pursue investigations for either violation. The Board's consensus was to accept staff's recommendation to reject this comment.

President McCormick noted that CDA comments that on page 49, Section 1680(k) "Advertising that Violates Section 651", "three years as a minimum penalty is harsh for a lesser or technical violation with no patient care issues." CDA recommends two years probation as a minimum penalty and staff recommends acceptance of this comment. The Board's consensus was to accept the comment and modify the text.

President McCormick noted that CDA comments that on page 49, Section 1680(l) "Advertising a Guarantee of Painless Operations" that three years is harsh for a violation with no quality of care issues. Staff recommends acceptance of this comment. The Board's consensus was to accept the comment and modify the text.

President McCormick noted that CDA comments that on page 49, Section 1680(m) "Violation of any Law Regulating Dispensing or Administering Dangerous Drugs/Controlled Substances", this text is "as written, the minimum penalty is overbroad in its application. In cases where the violation is technical, and not involving quality of care issues or self-administration, a minimum penalty of three years would be appropriate." Staff recommends rejection of this comment, as Ms. Kantner stated that violations of this section tend to occur in conjunction with other drug-related offenses. The Board voted M/S/P (Bettinger/Dominicis) to accept the comment and modify the text.

President McCormick noted that on page 50, Section 1680(m) "Violation of any Law Regulating Dispensing or Administering Dangerous Drugs/Controlled Substances", CDA comments that "An automatic suspension as a minimum penalty does not take into account situations where a technical violation occurred" and recommends the addition of "as an additional condition, if warranted" to the penalty. Staff recommends acceptance of this comment. The Board's consensus was to accept the comment and modify the text.

President McCormick noted that on page 50, Section 1680(m) "Violation of any Law Regulating Dispensing or Administering Dangerous Drugs/Controlled Substances", Items 5 – 9, CDA comments that "These are appropriate in cases involving self-administration, but not for many other violations of this statute." CDA proposes reclassifying these items as Additional Conditions. Staff recommends rejection of this comment, retaining these conditions ensures public protection. The Board voted M/S/P (Olinger/Dominicis) to accept the comment and modify the text.

President McCormick noted that on page 50, Section 1680(p) "Clearly Excessive Prescribing or Treatment", CDA comments that "A minimum penalty should be minimum, not a range" and recommends striking "to seven (7) years". Staff recommends acceptance of this comment. The Board's consensus was to accept the comment and modify the text.

President McCormick noted that on page 51, Section 1680(p) "Clearly Excessive Prescribing or Treatment", Condition 3, CDA comments that "This term is inconsistent with the minimum penalty of probation" and proposes striking this condition. Staff recommends acceptance of this recommended change. The Board's consensus was to accept the comment and modify the text.

President McCormick noted that on page 51, Section 1680(r) "Suspension or Revocation by another State", CDA comments that "Other states discipline may be based on conduct years earlier, and extending the disciplinary period may not be warranted," suggesting the addition of "or

ending concurrently with other state's discipline." Staff recommends rejection of this change as the Board is not routinely notified of other states disciplinary actions. The Board voted M/S/P (Burton/Olinger) to reject the comment and accept staff's recommendation.

President McCormick noted that on page 55, Section 1680(aa) "Group Advertising or Referral Service not Registered by the Board", CDA comments that "As written, the minimum penalty is overbroad in its application. In cases where the violation is technical, a minimum penalty of two years would be appropriate." CDA proposes striking "three (3)" and replacing it with "two (2) years probation. Staff recommends acceptance of this comment. The Board's consensus was to accept the comment and modify the text.

President McCormick noted that on page 55, Section 1680(bb) "Failure to use Fail Safe Machine", CDA comments that "if there is a technical violation not involving other quality of care issues, a minimum penalty of three years is excessive" suggesting that this be changed to two years. Staff recommends rejection of this comment due to the severity of potential patient harm. The Board voted M/S/P (Whitcher/Dominicis) to accept staff's recommendation and reject this comment.

President McCormick noted that on page 56, Section 1680(cc) "Engaging in the Practice of Dentistry with an Expired License", CDA comments "if there is a technical violation not involving patient care, a minimum penalty of three years is excessive." CDA further recommended making suspension an optional condition, if warranted. Staff recommends acceptance of this comment. The Board's consensus was to accept the comment and modify the text.

President McCormick noted that on page 56, Section 1680(dd) "Unsafe and Sanitary Conditions", CDA comments "For consistency, this section should be included under the same heading as Section 1680(t)." Staff recommends rejection of this comment as the two sections address different issues. The Board's consensus was to accept staff's recommendation and reject this comment.

President McCormick noted that on page 57, Section 1680(ee) "Use of Auxiliaries Beyond the Scope of the License", CDA comments "The suspension should not be a minimum penalty condition, but rather, an additional/optional condition if warranted." Staff recommends acceptance of this comment. The Board's consensus was to accept staff's recommendation and the comment.

President McCormick noted that on page 58, Section 1681(c) "Conviction of Violating State Drug Statutes", CDA comments "For consistency, this section should be included under the same heading as Section 1680(m)." Staff recommends rejection of this comment as Section 1681(c) is the "conviction" and Section 1680 (m) is not the conviction. The Board's consensus was to accept staff's recommendation and reject this comment.

President McCormick noted that on page 59, Section 1682 "Violation of Requirement re Patients Undergoing Conscious Sedation/General Anesthesia", CDA comments "For consistency, this section should be included under the same heading as Section 1646.1." Staff recommends rejection of this comment as Section 1646.1 addresses only the administration of general anesthesia on an outpatient basis, while Section 1682 specifies the grounds which constitute unprofessional conduct involving general anesthesia or conscious sedation. The Board's consensus was to accept staff's recommendation and reject this comment.

President McCormick noted that on page 59, Section 1683 "Treatment Entries in Patient Records", CDA comments "Compare Business and Professions Code Section 1670, which generally involves more serious misconduct." CDA suggests adding "or public reprimand" to the text, and the

required course be approved by the Board. Staff recommends acceptance of this comment. The Board's consensus was to accept staff's recommendation and modify the text.

President McCormick noted that on page 59, Section 1684 "Service Beyond the Scope of License", CDA comments "The facts under this category can be highly variable, depending upon the Licensee's education, training and experience or special certificates, as well as the interpretation of statutes regarding scope of practice." CDA suggests modifying the minimum term of probation from five to three years. Staff recommends acceptance of this comment. The Board's consensus was to accept staff's recommendation and modify the text.

The Board moved M/S/P (Olinger/Downing) to direct staff to take all steps necessary to complete the rulemaking process and to send out a modified text notice consistent with today's changes and if any negative comments are received, they must come back to the Board for final review and approval prior to completion of the rulemaking process, and if no negative comments are received, the Board authorizes the Executive Officer to adopt the regulations as promulgated today and complete the rulemaking process.

Public Comment:

Dean Chalios, CDA, asked what was the deadline for submitting comments. Ms. Kantner stated that the comment period would be contained in the notice.

Adjournment:

The meeting adjourned at 1:47 p.m.