



## **Dental Board of California Meeting Minutes**

**Thursday, May 19, 2011**

Embassy Suites SFO, 150 Anza Blvd.

Burlingame, CA 94010

### **Members Present:**

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

### **Members Absent:**

### **Staff Present:**

Richard DeCuir, Executive Officer  
Kim A. Trefry, Enforcement Chief  
Jocelyn Campos, Enforcement Coordinator  
Karen Fischer, Administrative Analyst  
Sarah Wallace, Legislative/Regulatory Analyst  
Linda Byers, Executive Assistant  
Kristy Shellans, DCA Senior Staff Counsel  
Greg Salute, Deputy Attorney General

### **ROLL CALL: Establishment of a Quorum**

Dr. Witcher called the meeting to order at 8:35 a.m. per Dr. Bettinger's request. Secretary Dominicus called the roll and established a quorum. Mr. Afriat was absent.

**The Board immediately went into closed session to discuss disciplinary matters and litigation.**

Mr. Afriat arrived at 9:18 a.m.

**The Board returned to open session at 11:35 a.m.**

### **AGENDA ITEM 1: Presentation by The Children's Partnership**

Ms. Jenny Kattlove, Director of Strategic Health Initiatives for The Children's Partnership, gave a verbal presentation outlining the goals of The Children's Partnership and highlighting the ways in which the Dental Board of California could be a valuable asset to their project to increase access to dental care for children. Dr. Guy Atcheson provided

literature to be distributed to the Board members regarding special “mid-level” providers. He suggested utilizing our Registered Dental Assistant in Extended Functions (RDAEF) and Registered Dental Hygienist in Alternative Practice (RDHAP) licensees as an alternative to creating another new category of “mid-level” provider. Ms. Kattlove responded saying that The Children’s Partnership believes that there are multiple solutions that need to work together. Dr. Alan Felsenfeld, on behalf of California Dental Association (CDA) remarked that 3 years ago CDA was tasked by their House of Delegates to look into the problem of access to care. As a result of this study two task forces were formed. One task force studied barriers to care and the other looked at workforce models. The response to CDA from these task forces is due this year. They anticipate the final response to be ready by the fall at which time CDA would be delighted to present it to the Dental Board. Dr. Bettinger stated that the Board would welcome that.

**Recess - Lunch Break**

The Board recessed at 12:06 p.m. for lunch and reconvened at 1:23 p.m. Dr. Dominicis called the roll and established a quorum.

The Board immediately went into Committee Meetings.

The Full Board reconvened at 6:10 p.m.

**AGENDA ITEM 2: Discussion and Possible Action Regarding the Renewal Application of the Universidad De La Salle**

Dr. Dominicis recused himself for this item. In December 2004, the Dental Board notified the Universidad De La Salle Bajio that its dental curriculum had been granted full approval according to the provisions of Section 1636.4 of the Business and Professions Code, which sets out the requirements for the evaluation, approval and renewal of foreign dental schools by the Board. Section 1636.4(g) requires that each approved institution submit a renewal application every seven years.

On January 31, 2011, the Board transmitted via overnight mail a renewal application and copies of the applicable statutes and regulations, requesting that the renewal application be returned no later than May 1, 2011 to conform to regulatory timelines.

Staff had submitted a request for out-of-state travel for four members of a site visit team to perform an evaluation of the school. All such requests must be approved by the Director of the Department of Consumer Affairs, the Agency Secretary, and the Governor’s Office. The request was in the Executive Office awaiting the Director’s approval however, Governor Brown issued Executive Order B-06-11 eliminating all state travel except non-discretionary and mission critical travel.

At its February 24, 2011 meeting, the Board voted that a subcommittee be created to review the renewal application and documents when submitted by the school. President Bettinger appointed Dr. Huong Le and Dr. Steven Morrow to perform the review.

The renewal package was received by staff at the Board office on Friday, April 29, 2011 and copies of it were forwarded to the subcommittee for review on Monday, May 2, 2011. The renewal application is currently under review.

On April 29, 2011, Drs. Le and Morrow met via teleconference with the Board's Legal counsel Kristy Shellans and her supervisor Don Chang and Richard DeCuir, Executive Officer. The consensus at the meeting was that the Board has the option to extend the review and approval process.

On May 3, 2011, the sub-committee received the renewal application and supporting documents from the University De La Salle School of Dentistry.

The sub-committee is currently in the process of reviewing the application and supporting documentation. The sub-committee is waiting to receive additional documents in English since some of the original documents submitted were in Spanish. The school has been advised.

**The sub-committee is asking the Board for consideration of the following:**

That legal counsel provide the Board with formal legal opinion and guidance regarding the following issues, by the Board's next meeting:

- Do the Board's laws authorize the Dental Board to approve a specified curriculum within a school of dentistry or only approve a school of dentistry?
- If the sub-committee or the Board is unable to complete its review of the school's completed application before the school's current approval is set to expire, does the Board have legal authority to extend the school's current approval for a reasonable period of time to complete its review and assessment of the school and its application?

The sub-committee feels that the Board needs formal legal clarification and guidance on these issues in order to know how to proceed in the review and processing of this application.

**Title 16, CCR §1024.11 renewal of foreign Dental School** states that; "The Board may, in its discretion, conduct a site inspection to ascertain continued compliance with the requirements of these regulations".

**The subcommittee requests** that the Dental Board authorize the Sub-committee to act as their designee to take necessary steps to move the process of renewal forward and report back to the board periodically. Specifically, to authorize the subcommittee to appoint the site team and technical advisory group (TAG) as it deems necessary to process the review and evaluation of this school's application.

M/S/C (Afriat/Olinger) that legal counsel provide the Board with a formal legal opinion and guidance regarding the following issues: Do the Board's laws authorize the Dental Board to approve a specified curriculum within a school of dentistry or only approve a school of dentistry? If the sub-committee or the Board is unable to complete its review of the school's completed application before the school's current approval is set to expire, does the Board have legal authority to extend the school's current approval for a reasonable period of time to complete its review and assessment of the school and its application? The motion carried unanimously. M/S/C (Afriat/McCormick) to authorize the Sub-

committee to act as their designee to take necessary steps to move the process of renewal forward and report back to the Board periodically. Specifically, the Board authorizes the Sub-committee to appoint a site team and technical advisory group as it deems necessary to process the review and evaluation of this school's application. The motion passed unanimously.

**Agenda Item 3(A): Discussion and Possible Action to Consider Comments Received During the 45-Day Public Comment Period Relative to the Proposed Addition of Title 16, CCR, Section 1018.05 and the Proposed Amendment to Title 16, CCR, Section 1020 for the Consumer Protection Enforcement Initiative**

Ms. Wallace reported that the Board approved the proposed addition of section 1018.05 and the proposed amendment of section 1020 of Title 16 of the California Code of Regulations relative to the Consumer Protection Enforcement Initiative and directed staff to initiate a rulemaking at the November 5, 2010 meeting.

The initial rulemaking documents were filed with the Office of Administrative Law on February 7, 2011. The 45-day public comment period began on February 18, 2011 and ended on April 4, 2011. The regulatory hearing was held on April 4, 2011. The California Dental Association (CDA) submitted comments in response to the proposed text.

CDA expressed concern regarding the subjective nature of the examination of an applicant for a mental or physical illness whenever the applicant "appears" to be unable to safely practice. Staff recommended rejection of this comment. Staff believes the commonly understood meaning of "appears" is sufficiently clear. Appears means "to have the appearance of being; seem; look" (Random House Dictionary, © Random House, Inc. 2011.) Therefore, if the Board has factual evidence in a specific case that a person seems like they may have a physical or mental condition affecting competency, the Board may refer for an examination. The applicant's rights are protected by the confidentiality of the process and double-checked by an independent expert evaluating the facts presented to him or her. At the same time, the Board ensures that the public is protected by the Board's further investigation into competency before a license is issued. The applicant bears the burden of proof of their fitness for competency to practice. The proposed regulatory language is derived from existing law, Business and Professions Code Section 820, and licensing agencies within the Department of Consumer Affairs have used this provision without issue. Additionally, the examination would be performed on a case-by-case basis by a professional expert trained to perform examinations for mental or physical competency. M/S/C (Burton/Afriat) to reject CDA's comment regarding the subjective nature of the examination of an applicant for a mental or physical illness whenever the applicant "appears" to be unable to safely practice. The motion passed unanimously.

Additionally, CDA was concerned that the proposed regulatory language appeared to only allow the Board the option of outright denial of the application for licensure if the requested examination leads to concerns. Staff recommended modifying the text to address these concerns, maintain consistency with the "Dental Board of California Disciplinary Guidelines With Model Language", revised 8/30/2010, and provide a higher level of due process for the applicant, while still maintaining protection of the public. Staff recommended modifying the last sentence of section 1020(a) to read as follows: "If after receiving the report of evaluation, the Board determines that the applicant is unable to safely practice, the Board may deny the application, or may issue the applicant a license that is placed on probation with terms and conditions. If the Board issues a license on

probation, the probationary order shall include an order that the license be revoked, stayed and placed on probation for the entire term of probation. In issuing a license on probation, the Board may consider any or all of the following terms and conditions: (i) Requiring the licensee to obtain additional training or pass an examination upon completion of training, or both. The examination may be written, oral, or both, and may be a practical or clinical examination or both, at the option of the Board; (ii) Requiring the licensee to submit to a mental or physical examination, or psychotherapy during the term of probation under the terms and conditions provided for in the "Dental Board of California Disciplinary Guidelines With Model Language" revised 08/30/2010, incorporated by reference at Section 1018; or, (iii) Restricting or limiting the extent, scope or type of practice of the licensee." M/S/C (Whitcher/Afriat) to accept staff's recommended modifications to the text in response to CDA's concern that the proposed regulatory language appeared to only allow the Board the option of outright denial of the application for licensure if the requested examination leads to concerns. The motion passed unanimously.

In addition to the proposed modifications to address CDA's concerns, staff recommended adding language to Section 1020(a) to provide for the confidentiality of examination records if there is insufficient evidence to bring an action against the applicant. Staff recommended maintaining the records for a period of five years from the date of determination. If no further proceedings are conducted to determine the licensee's fitness to practice within the five years, staff recommended the records be purged and destroyed. However, if new proceedings are conducted during the five year period, staff recommends authorizing the Board to utilize the records of the examination in the proceedings. These provisions regarding confidentiality of the examination and the destruction of insufficient evidence are consistent with those privacy protections provided to licensees in Section 828 of the Business and Professions Code. Staff recommended the addition of Section 1020(a)(2) as follows: "If the Board determines, pursuant to proceedings conducted under this subdivision, that there is insufficient evidence to bring an action against the applicant, then all Board records of the proceedings, including the order for the examination, investigative reports, if any, and the report of the physicians and surgeons or psychologists, shall be kept confidential. If no further proceedings are conducted to determine the applicant's fitness to practice during a period of five years from the date of the determination by the Board of the proceeding pursuant to this subdivision, then the Board shall purge and destroy all records pertaining to the proceedings. If new proceedings are instituted during the five-year period against the applicant by the Board, the records, including the report of the physicians and surgeons or psychologists, may be used in the proceedings and shall be available to the Respondent pursuant to the provisions of Section 11507.6 of the Government Code." M/S/C (Casagrande/Olinger) to accept staff's recommended modifications to the text. The motion passed unanimously.

**Agenda Item 3(B): Discussion and Possible Action to Consider Adoption of the Proposed Addition of Title 16, CCR, Section 1018.05 and the Proposed Amendment to Title 16, CCR, Section 1020 for the Consumer Protection Enforcement Initiative**

M/S/C (McCormick/Afriat) to modify the text in response to the comment 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 amendments to Title 16, CCR, Sections 1018.05 and 1020 as noticed in the modified text.

**Agenda Item 4(A): Discussion and Possible Action Regarding Status and Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to Amend Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines:**

Ms. Wallace reported that the Board approved proposed amendments to Sections 1018 and 1020.5 of Title 16 of the California Code of Regulations relative to the Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines at its February 25, 2011 meeting. The initial rulemaking documents were filed with the Office of Administrative Law on March 11, 2011. The 45-day public comment period began on March 25, 2011 and ended on May 9, 2011. The regulatory hearing was held on May 10, 2011 in the Hearing Room located at 2005 Evergreen Street, Sacramento, CA 95815. The Substance Abuse Coordination Committee (SACC) met on April 11, 2011 and revised requirements contained in the *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*. Due to the close proximity of the regulatory hearing and the scheduled Board meeting, staff did not have sufficient time to thoroughly evaluate the comments received in response to the proposed regulation as well as develop proposed modified text to use the SACC's revised *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*. No Board action was taken.

**Agenda Item 4(B): Discussion and Possible Action Regarding Adoption of Proposed Amendments to Title 16, CCR, Sections 1018 and 1020.5 Regarding Uniform Standards for Substance Abusing Licensees and Disciplinary Guidelines:**

Due to the close proximity of the regulatory hearing and the scheduled Board meeting, staff did not have sufficient time to thoroughly evaluate the comments received in response to the proposed regulation as well as develop proposed modified text to use the SACC's revised *Uniform Standards Relating to Substance-Abusing Healing Arts Licensees*. No Board action was taken.

**Public Comment**

There was no public comment

The Board recessed at 6:45 p.m.