



Dental Board of California Meeting Minutes

Friday, May 20, 2011

Embassy Suites SFO, 150 Anza Blvd.

Burlingame, CA 94010

Members Present:

John Bettinger, DDS, President
Bruce Whitcher, DDS, Vice President
Luis Dominicis, 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
Karen Fischer, Administrative Analyst
Sarah Wallace, Legislative/Regulatory Analyst
Kristy Shellans, DCA Senior Staff Counsel
Greg Salute, Deputy Attorney General

Friday, May 20, 2011

8:00 a.m. DENTAL BOARD OF CALIFORNIA – FULL BOARD

ROLL CALL: Establishment of a Quorum

President Bettinger called the meeting to order at 8:08 a.m. Secretary Dominicis called the roll and established a quorum.

AGENDA ITEM 5: Approval of the Full Board Meeting Minutes from February 24-25, 2011

M/S/C (Afriat/Whitcher) to approve the minutes from the February 24-25, 2011 Dental Board Meeting. The motion passed unanimously.

AGENDA ITEM 6: President's Report

Dr. Bettinger thanked all the Board Members for taking time away from their families and work to be a part of this Board for the purpose of public protection and for all the hard work that they do on behalf of the Board in between the Board Meetings. Dr. Bettinger reported that he attended the California Dental Association (CDA) Convention earlier this month. He stated that he met with CDA and the deans and representatives from the 6 dental schools to discuss the Faculty Special Permits that the Board issues. These permits are issued to international specialty faculty members who teach and practice at the school helping to generate revenue. At the present time each school is limited to 5 of these specialty licenses. The schools are asking for unlimited permits to help meet budgetary constraints. CDA has asked to work with staff to get clarification from Senator Emmerson on what the intent of the bill was so that in August we can look at possibly changing the limitations on the number of permits

allowed per school and number of days allowed to practice. Dr. Bettinger stated that the Board would be using the new forms formulated by the Department of Consumer Affairs (DCA) to conduct the Executive Officer's Performance Evaluation at the August Board meeting.

AGENDA ITEM 7: Executive Officer's Report

Richard DeCuir, Executive Officer, reported on the travel restrictions and the hiring freeze. He stated that there are funds to establish webcasting in the Sacramento and Orange offices.

AGENDA ITEM 8: DCA Director's Report

Lavonne Powell, representing the Director of the Department of Consumer Affairs stated that Agency had approved the requested hiring exemptions and they are now in the hands of the Finance Department for approval. She reported on the travel restrictions but stated that no specific details will be available until after the budget letter comes out. Ms. Powell reported that there was 1 bid for the BREEZE project that came in higher than anticipated so they are negotiating with the bidder and hope that a final contract will be in place by August. She stated that DCA is collecting empirical data to support raising some of the Executive Officer's salary caps.

AGENDA ITEM 9: Update on Dental Hygiene Committee of California (DHCC) Activities

There was no report from the DHCC as they were unable to obtain travel authorizations in time. Dr. Whitcher suggested we ask for a written report in the future. Katie Dawson requested a reciprocal report from the Dental Board for the DHCC meetings.

AGENDA ITEM 10: Budget Reports: Dental Fund & Dental Assisting Fund

Richard DeCuir, Executive Officer, gave an overview of the budget report.

AGENDA ITEM 11: Update on Dental Board of California's Sunset Review Process and Discussion and Possible Action Regarding SB 540 (Price)

Dr. Bettinger reported that he had asked Dr. Whitcher and Fran Burton to work as a subcommittee to represent the Board at the hearings. Karen Fischer, Project Manager for the Sunset Review Process, gave an overview of what had occurred since February, the specifics of the legislation, and highlights of a couple of issues that the Board might want to focus on.

There was considerable discussion regarding the composition of the Board. M/S (Afriat/Olinger) that the Dental Board take a position of opposition to the removal of the Dental Assistants from the Dental Board, and instead recommend to the Legislature that the Board be made up of 8 Dentists, 5 Public members, and 2 Dental Assistants. There was more discussion regarding the composition of the Board. Mr. Afriat withdrew his first motion; Dr. Olinger withdrew his second on that motion. M/S/C (Afriat/Olinger) that the Dental Board oppose the removal of Dental Assistants from the Board and recommend that either the Legislature reduce the current recommended number of Public Members to 5 and maintain 2 Dental Assistants or increase the number of Dental Board Members to 17 and have 8 Dentists, 7 Public Members and 2 Dental Assistants. The motion passed unanimously with 2 abstentions. Earl Johnson, California Association of Orthodontists, stated that he is very much in favor keeping the Dental Assistant members on the Board. Bill Lewis with California Dental Association (CDA) reported that CDA has not issued a formal position on SB 540. However, CDA would not support the second part of the motion which would put Dentists in an overall minority on the Board. Mr. Lewis stated that CDA advocated to the Senate B & P staff for: 8 Dentists, 5 Public Members, 1 Dental Hygienist and 1 Registered Dental Assistant. Katie Dawson, California Dental Hygienists Association (CDHA) stated that CDHA has not taken a formal position on the make-up of the Dental Board. She mentioned that the Dental Hygiene Committee of California (DHCC) consists of 4 Dental Hygienists, 4 Public Members and 1 Dentist and it is working very well for them. Tamara McNeely, CADAT, commented that they would support if amended. They were concerned about having their voice taken away. Karen Wyant, Dental Assisting Alliance, commented that the Dental Assisting Alliance doesn't have a position on the Board's composition but is very supportive of the proposed Dental Assisting Council. Alan Felsenfeld, DDS, commented that he does not support a composition of Board Members where the Dentists are not the majority of the voting body. He would like the Board to reconsider their motion. Dr. Casagrande asked Karen Wyant who the Dental Assisting Alliance was. She stated that the Dental Assisting Alliance is a coalition of the California Dental Assistants Association (CDAA) and the

Expanded Functions Dental Assistants Association (EFDAA). She stated that she represents a coalition of the two on issues of mutual interest. She stated that she is a consultant to the Dental Assisting Alliance. M/S/C (Olinger/Dominicis) to reconsider the last motion. The motion passed unanimously with 3 abstentions. There was more discussion regarding the composition of the Board. M/S/C (Afriat/Olinger) to oppose the removal of the Dental Assistant position from the Board and to offer a recommendation that the author consider the re-composition of the Board to include; 8 Dentists, 5 Public Members, and 2 Dental Assistants. Bill Lewis, CDA, commented that he would suggest simply taking a position of opposition against removing the Dental Assistant representation from the Board rather than getting into a numbers debate. The motion passed unanimously.

There was discussion regarding the formation of a Dental Assisting Council. Kristy Shellans, Legal Counsel, explained that the Dental Assisting Council would be a standing Committee of the Dental Board and replace the Dental Assisting Forum and the Dental Assisting Committee. M/S (Downing/McCormick) to take a neutral position on the Dental Assisting Council provisions of SB 540. Katie Dawson, CDHA, commented, would it have any effect on how the funds are divided? Tamara McNeely, CADAT, commented that they support the composition of the Dental Assisting Council however; we strongly oppose the appointing of the members by just the President of the Board. She stated that they have some grave concerns about prior DAF appointees being appointed to the new Council, they also have concerns regarding the members meeting the qualifications of section 1602, and that they demonstrate satisfaction of the appointing authority of having no proprietary interest in the business of dental assisting education or examination. We realize that seeking government appointments would be a long process but we just want to insure that there are some checks and balances as to the background and the qualifications of the Council appointees. She further stated that CADAT would prefer legislative appointments because of their concern about what was happening with the DAF and that they have sent all this information in their position letter to the B & P Committee. Kristy Shellans, Legal Counsel, stated that all of the Committee Members are appointed by the Board President. It would change the way the Board President runs the Committees if it were a legislative or gubernatorial appointment for Committee members. Tamara McNeely, CADAT, thanked Ms. Shellans for that clarification and stated that they do recognize that but they just want some safeguards regarding the qualifications of the Council members. The discussion returned to the motion on the table. Ms. Downing withdrew her motion and Dr. McCormick agreed to withdraw the second. There was no new motion.

Mr. DeCuir reported that they sent a letter to the Business & Professions Committee Chair and staff asking for additional tools to strengthen the Enforcement Program. In addition to just filing an Accusation they asked that a Notice of Correction, Letter of Admonishment and a time limitation for posting citations and fines on the Internet be included. There was discussion about whether this needed to be done in SB 540 or whether it could wait and be done in SB 544. M/S/C (Casagrande/Afriat) to include the Enforcement tools in the letter to the Senate B & P Committee. The motion passed unanimously with 2 abstentions.

M/S/C (McCormick/Olinger) to take a position of support on SB 540 with recommendations that the pertinent bullets be ratified and included in the letter to the Senate B & P Committee. The pertinent bullets being:

- Provide an amendment to ensure that the Board will be able to continue to collect fees on or after January 1, 2012; but that any increase in fees on or after January 1, 2012 would need to be adopted by regulation rather than resolution. The Board will be unable to collect current dental assisting fees after January 1, 2012 until the regulations become effective.
- Add additional enforcement methods that would assist staff in closing minor to moderate violations more quickly (time limitations on public disclosure for citations issued for less egregious violations, Notice of Correction, and Letter of Admonishment).
- Provide clarification regarding: the Dental Assisting Council assuming disciplinary functions; conflict of interest language for the qualifications of the Dental Assisting Council appointees; and, the

Board's ability to hear dental assisting issues in its other committees such as Enforcement, Examinations, Licensing/Certification/Permits, and Legislation/Regulatory as a result of the establishment of the Dental Assisting Council.

The motion passed unanimously with 2 abstentions. M/S/C (Afriat/Olinger) to give authority to the subcommittee to review the communications to the Legislature and authorize them to make any technical, non-substantive changes. The motion passed unanimously with 2 abstentions.

AGENDA ITEM 12: Discussion and Possible Action Regarding SB 544 (Price), Professions and Vocations: Regulatory Boards Relating to the Consumer Health Protection Enforcement Act

Sarah Wallace, Legislative and Regulatory Analyst reported that SB 544 is similar to last year's SB 1111. Staff worked with the subcommittee on a preliminary analysis of the SB 544 and wrote a letter to Senator Price. This is an informational item only as SB 544 was identified as a 2 year bill at the hearing on May 2, 2011. The subcommittee and staff will provide a more thorough analysis at a future Board meeting. M/S/C (Afriat/ McCormick) to continue to the August meeting with a package on SB 544 at staff's discretion. The motion passed unanimously.

AGENDA ITEM 13: Examination Committee Report:

Dr. Stephen Casagrande, Chair, reported that a quorum was established and the meeting minutes of February 24, 2011 were accepted. Dr. Casagrande reported that 1 out of 3 dental assisting program applicants are not passing the written exam. The committee recommended that Dental Assistants weigh in on the creation of the new examination. Dr. Casagrande reported that even with the addition of 3 more RDA exams, there is still the need for more in different locations. It was determined that as far as a site for the examination, a dental school is not necessary. The committee recommended that staff look for varied sites in the central valley, San Diego area, and further north. Dr. Dominicus gave a report on the examination for WREB Examiners. Dr. Casagrande reported that the Law and Ethics exam is now computerized which makes it easy for students to get this portion of their education out of the way at any time. Dr. Casagrande reported that CADAT has formed a task force to look into Portfolio licensure for RDA's. He recommended that President Bettinger appoint Judy Forsythe to work with the task force. Tamara McNeely, CADAT thanked the committee for continuing to expand the RDA exam testing sites and for the recommendation to appoint a Board member to work with their task force on alternative pathways to licensure. M/S/C (Afriat/McCormick) to accept the committee's report. The motion passed unanimously.

AGENDA ITEM 14: Examination Appeals Committee Report

Dr. Dominicus, Chair, reported that a quorum was established. The committee considered one RDA appeal and recommended that the Board grant the appeal on the basis that there was a procedural error at the examination. M/S/C (Afriat/Olinger) to accept the committee recommendation. The motion passed unanimously.

AGENDA ITEM 15: Licensing, Certification & Permits Committee Report

Dr. Bruce Whitcher, Chair, reported that a quorum was established and the meeting minutes of February 24, 2011 were accepted. During the committee's closed session, they considered applications from 2 RDA's for licenses to replace cancelled licenses and 1 dental applicant for a license to replace a cancelled license. M/S/C (Dominicus/Burton) to accept the Licensing, Certification, and Permit Committee's recommendation to issue new licenses to replace cancelled licenses to the 2 RDA applicants. The motion passed unanimously. M/S/C (Afriat/McCormick) to accept the Licensing, Certification, and Permit Committee and staff's recommendation to deny the issuance of a license to replace a cancelled license to the Dental applicant because there was no authority to grant his request. There was no public comment. The motion passed unanimously. M/S/C (Afriat/Olinger) to accept the Licensing, Certification, and Permit Committee's report including Dr. Bettinger's request that staff write a letter to the appropriate entity to see if it is possible to add the option to "cancel" a permit on the renewal form and follow up on it. The motion passed unanimously.

Dr. Morrow clarified that his question regarding Specialty Licensure was; could a dentist practicing under a specialty license in another state qualify for licensure by credential in California which is an unrestricted license. Does that individuals' practice limited to his/her specialty for 5 years qualify for that

application process by credential? LaVonne Powell, former legal counsel for the Dental Board, commented that in other states such as Oregon you can have a 'specialist' license which restricts you to only that practice. She further stated that the Board looked into this issue to see if the term restricted could be clarified by the legislature. The legal opinion at that time was that "restricted" referred to disciplinary actions, not the type of dental practice. Dr. McCormick made the point that the majority of Dentists initially graduate from Dental School with a license for General Dentistry, then go on to further education to practice a specialty. Dr. Earl Johnson commented that he was the one who started all this with his question regarding foreign trained dentists with a specialty license sitting for the Board examination. He stated that he would like the Board to consider Legislation to allow foreign trained dentists to sit for the boards in order to receive a restricted license to practice their specialty. His concern is that this precludes some dentists including faculty from sitting for the board exam. M/S/C (Casagrande/Afriat) to agendize this issue for the August Board meeting and bring back more information at that time. The motion passed unanimously.

AGENDA ITEM 16: Dental Assisting Committee Report

Judith Forsythe, Chair, reported that a quorum was established and the meeting minutes of February 24, 2011 were accepted with amendments. The committee recommended that the Board accept the DAF's list of suggested parameters focusing on items 1, 3, 4, and 5 pending passage of SB 540 and that item #3 be amended to say "review and suggest". The committee decided to table the issue of allowing RDAEF's to perform local anesthesia until additional information is submitted to the committee for review and reconsideration. Applied Measurements is reviewing the RDA written exam. The committee recommended that the Board consider changes to the outline for the RDA written exam to exclude or reduce the quantity of questions for Infection Control, Dental Radiation Safety, and Preventative Procedures during the examination review process in accordance with B & P Code Section 139. The committee recommended studying the issue and asking for exam validity from OPES for the possibility of splitting the RDAEF exam into 2 separate parts: Clinical and Laboratory. The committee recommended that a subcommittee be formed to look into the feasibility of conducting a survey of RDAEF licensees for the purpose of analysis of workforce and access to care. Dr. Bettinger appointed Dr. Witcher and Judy Forsythe to the subcommittee to come up with survey questions. M/S/C (Afriat/McCormick) to accept the committee recommendations and the committee report. The motion passed unanimously. Tamara McNeely, CADAT, commented that she would like an item regarding DANBE recognition on the next meeting agenda.

AGENDA ITEM 17: Legislative and Regulatory Committee Report

Fran Burton, Chair, reported that a quorum was established and the meeting minutes of February 24, 2011 were accepted. The committee reviewed the legislative calendar and noted the May 27, 2011 deadline for fiscal committees to hear and report bills. The committee then moved on to their list of legislation. Ms. Burton reviewed the Committee's recommendations for each bill. M/S/C (Afriat/Downing) to accept the committee's recommendations. The motion passed unanimously.

AGENDA ITEM 18: Enforcement Committee Report

Rebecca Downing, Chair, reported that a quorum was established and the meeting minutes of February 24, 2011 were accepted. Staff was commended on such a thorough group of reports. Ms. Downing gave an overview of the report contents. Dr. Dominicis commented that the Calibration Course was well received and attracted very good quality consultants. Dr. Dominicis stated that he would like to see the Board be more proactive in the recruitment of females and minorities as consultants. M/S/C (Afriat/Forsythe) to accept the committee report. The motion passed unanimously.

AGENDA ITEM 19: Update from Subcommittee Regarding Portfolio Licensure Examination for Dentistry (AB 1524, Stats 2010 ch 446)

Dr. Casagrande reported, for the subcommittee that they are now in the process of creating a structure for the exam, developing standardized criteria for assessment and grading of applicants' competency. They are also developing the training and calibration of examiners and a process by which the Board will be able to independently monitor and audit the Portfolio examination. COMIRA, the Board's professional exam developer and contractor, held a kick-off meeting in southern California at USC, to begin the implementation phase of Portfolio. COMIRA is gathering all six different specialties from

within the Dental schools that will be tested in Portfolio and, gathering the criteria for and developing the standardized grade sheets. The Board and staff will use that information to develop Regulations.

AGENDA ITEM 20: Report on the April 27, 2011 meeting of the Elective Facial Cosmetic Surgery (EFCS) Permit Credentialing Committee, Discussion and Possible Action to Accept Committee and Subcommittee Recommendations:

(A) Dr. Suzanne McCormick reported that the EFCS permit committee met via teleconference to consider one application for an EFCS permit. The application was tabled pending further clarification. She explained the new website language for easier navigation through the application process. The committee requested that the Board approve the committee's recommended modifications to the webpage language. M/S/C (Afriat/Olinger) to approve the committee report and recommendations. The motion passed unanimously.

(B) Dr. Witcher reported that he and Dr. McCormick were asked to serve on a subcommittee to review applications to replace Dr. Karas who had resigned from the EFCS Committee. Dr. Witcher thanked Dr. Karas for his long service to the EFCS Committee. The subcommittee received applications from two very qualified candidates. M/S/C (Afriat/McCormick) to accept the subcommittee's recommendation to fill the vacancy on the Elective Facial Cosmetic Surgery Permit Credentialing Committee with Dr. Louis Gallia. The motion passed unanimously.

In an attempt to increase the applicant pool in the future, Mr. Afriat requested that staff notify other interested parties, in addition to those organizations outlined in statute, when vacancies occur on the EFCS Permit Credentialing Committee.

AGENDA ITEM 21: Discussion and Possible Action Regarding Subcommittee Report on Record Retention of Inactive Patient Records.

Dr. Morrow reported that he and Dr. Olinger looked at what several other organizations use for a length of time for retention of records. The subcommittee recommends the requirement that records be retained for at least seven years from the date of an adult patient's last visit. Dental records of an unemancipated minor must be maintained for at least one year after the minor has reached age seventeen but not less than seven years from the date of the patient's last visit. M/S/C (Casagrande/Afriat) to accept the subcommittee's recommendations and to direct staff to prepare regulatory language to include defining active and inactive (a patient who has not been seen for twenty-four months). The motion passed unanimously. Mr. DeCuir asked that the staff be allowed flexibility on this new regulatory package as this was not on the regulatory priorities list for this year. Dr. Bettinger agreed and asked that we revisit regulatory priorities at the August Board meeting.

AGENDA ITEM 22: Discussion and Possible Action to Conduct a Feasibility Study for a Continuing Competency Program

Dr. McCormick reported that we will be looking at the different models of Continuing Competency Programs in the future. M/S/C (Olinger/Afriat) to table the discussion until the next meeting. The motion passed unanimously. Dr. Earl Johnson commented that the Board might want to consider Core Competencies as an alternative to Continuing Competencies.

PUBLIC COMMENT

There was no further public comment.

ADJOURNMENT

The meeting adjourned at 1:24 p.m.