



**DENTAL BOARD OF CALIFORNIA**  
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**Dental Board of California**  
**Meeting Minutes**  
**Thursday, February 23, 2012**  
Holiday Inn on the Bay, 1355 North Harbor Drive  
San Diego, CA 92101

**Members Present:**

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

**Members Absent:**

**Staff Present:**

Richard DeCuir, Executive Officer  
Denise Johnson, Assistant Executive Officer  
Kim Trefry, Enforcement Chief  
Teri Lane, Supervising Investigator I  
Jocelyn Campos, Enforcement Coordinator  
Sarah Wallace, Legislative and Regulatory Analyst  
Karen Fischer, Associate Analyst  
Linda Byers, Executive Assistant  
Kristy Shellans, DCA Senior Staff Counsel  
Greg Salute, Deputy Attorney General

Dr. Bruce Witcher, President, called the meeting to order at 8:30 a.m. Fran Burton, Secretary called the roll and a quorum was established.

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

**The Board returned to open session at 1:05 p.m.**

Dr. Witcher introduced the visiting students from the Southwest Dental Hygiene Program who attended as part of their ethics course. He also introduced the representatives from CADAT, Tamara McNeely, Program Director from San Joaquin Valley College, Guy Acheson, Academy of General Dentistry, representatives from CDA, Katherine Scott from the Children's Partnership, and representatives from the Universidad De La Salle. Fran Burton, Secretary, called the roll and established a quorum.

**AGENDA ITEM 1: Update on Pending Regulatory Packages:**

Sarah Wallace, Legislative and Regulatory Analyst gave an overview of the pending regulatory packages.

**A. Consumer Protection Enforcement Initiative (Cal. Code of Regs., Title 16, Sections 1018.05 and 1020)**

Ms. Wallace reported that the Consumer Protection Enforcement Initiative (CPEI) has been going through the regulatory process for the past year. Staff was notified by the Office of Administrative Law (OAL) at the beginning of February that the package had been approved. It has been filed with the Secretary of State and will become effective on March 9, 2012. The Board's website has been updated with this new information.

**B. Uniform Standards Relating to Substance Abusing Licensees and Disciplinary Guidelines (Cal. Code of Regs., Title 16, Sections 1018 and 1020.5)**

Ms. Wallace stated that this regulatory package will be discussed during Agenda Item 2.

**C. Sponsored Free Health Care Events (Cal. Code of Regs., Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18)**

Ms. Wallace stated that this regulatory package had gone out for the 45 day public comment period which ended on November 21, 2011. There was a regulatory hearing held on November 22, 2011. The Board received comments from the California Association of Oral and Maxillofacial Surgeons (CALAOMS), the California Dental Association (CDA), and the California Academy of General Dentists (CAGD). We will be discussing and responding to comments during Agenda Item 3.

**D. Notice to Consumers of Licensure by the Dental Board (Cal. Code of Regs., Title 16, Section 1065)**

Ms. Wallace reported that at the November meeting the Board reviewed proposed language for the Notice to Consumers of Licensure by the Dental Board. This was a regulation that was required as a part of the Board's Sunset Review bill, SB 540. Staff has initiated the rulemaking with OAL and filed the rulemaking on January 10, 2012. The 45 day public comment period began on January 20, 2012 and will end on March 5, 2012. A Regulatory Hearing is scheduled for March 5, 2012 in Sacramento. Any comments received during the public comment period will be brought to the Board at the next meeting.

**AGENDA ITEM 2(A): Discussion and Possible Action Regarding 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 this item is the Board's Regulatory Package relative to Uniform Standards. During the August and November Board meetings the Board reviewed comments that had been received during the 45 day public comment periods. At the November meeting the Board tabled discussion due to conflicting legal opinions. There was not sufficient time to review and provide an opinion regarding the Legislative Opinion due to the limited timeframe between when the Legislative Opinion was received and the date of the Board meeting. The Board voted to table further discussion until the Department could provide further clarification.

DCA notified staff a few days prior to this Board meeting that another opinion from the Government Unit of the Deputy Attorney General's office was received. DCA's legal department is still reviewing this opinion and it has not yet been released to the Boards. Kristy Shellans, legal Counsel to the Dental Board stated that she only received this opinion a few days prior to the Board meeting and has not had adequate time to review it. Ms. Shellans stated that due to the lack of time to review the new opinion and the fact that this particular rulemaking is due to expire in March, she recommends that the Board direct staff to either let the current package expire or withdraw it and authorize the Executive Officer and staff to work with legal in preparing suggested text for possible changes to

the guidelines for the Board's consideration at an upcoming meeting once the analysis of the opinion has been received.

Mr. DeCuir inquired who exactly the new opinion was from. He stated that if it's not directly from the Attorney General's Office, does it hold the same weight? Ms. Shellans stated that it is an independent interpretation of the implementation requirements of SB 1441, from a Deputy Attorney General in the Government Unit, an informal opinion not a formal opinion but the Government Unit's opinion carries some weight because they deal with a lot of interpretations of State Law.

Ms. Shellans stated that the only way for the Board to make a truly informed decision is to have all of the opinions and proposals to consider. Ms. Shellans said that one of the opinions stated that within each agency, an analysis needs to be done to determine how the proposed standards would interact with each Practice Act.

Mr. Afriat asked if Ms. Shellans opinion had changed. Ms. Shellans answered that her opinion has not really changed but she thinks there may be a way to harmonize the different opinions. She stated that she still believes that the Board retains ultimate discretion to decide what rules it will adopt. Mr. Afriat asked what the other Boards are doing. Ms. Shellans answered that it is her understanding that all of the other Boards will be given the same recommendation by their legal counsel as she gave to this Board earlier.

Greg Salute, Deputy Attorney General stated that the Department of Consumer Affairs (DCA) asked for another opinion from the Government Unit of the Attorney General's Office. He said that is why they rendered the new opinion.

Fran Burton asked what the timeframe would be for Kristy to get back to the Board with her evaluation of this opinion and suggestions to the Board. Sarah Wallace stated that she thought she would probably be ready with some suggested text by May depending on when DCA releases their analysis.

M/S/C (Bettinger/Olinger) to let the rulemaking expire and bring it back at the will of the Executive Committee working with staff at the time that they deem necessary. There was no public comment. The motion passed unanimously.

**AGENDA ITEM 2(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**

No discussion or action taken.

**AGENDA ITEM 3(A): Discussion and Possible Action Regarding Comments Received During the 45-Day Public Comment Period for the Board's Proposed Rulemaking to Add Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events**

Ms. Wallace reported that at the February 2011 Board meeting the Board approved regulatory language and staff filed the rulemaking with the Office of Administrative Law (OAL) on September 27, 2011. The 45 day public comment period began October 7, 2011 and ended November 21, 2011. A regulatory hearing was held on November 22, 2011 in Sacramento.

The Board received comments from the California Association of Oral and Maxillofacial Surgeons (CALAOMS), the California Dental association (CDA), and the California Academy of General Dentists (CAGD). There were five general comments. CALAOMS and CDA had generally the same comments and were summarized together.

### **1. Comments Regarding Fingerprinting Requirement:**

Both CDA and CALAOMS commented that the requirement for out-of-state practitioners to provide fingerprints to the Board seemed excessive and unnecessary. Both organizations commented that the oversight of the sponsoring entities and remaining documentation the practitioner would be required to submit proving licensure and good standing in another state would be sufficient to ensure the professional quality of the practitioner.

Staff recommended rejection of this comment. The requirements for out-of-state practitioners to submit fingerprints as part of the application process is reasonably necessary in order for the board to verify that an applicant is "in good standing" as required by Section 901, including the requirement of Section 901(b)(1)(B)(i) that the applicant has "not committed any act or been convicted of a crime constituting grounds for denial of licensure or registration under [Code] Section 480." Section 480 authorizes a board to deny licensure based on an applicant's conviction of a substantially-related crime or the commission of an act substantially-related to the qualifications, functions or duties of a licensed dentist. A criminal background check cannot be effectuated if the board does not have the appropriate personal identifying information. Further, the board is authorized to require applicants to furnish fingerprints for criminal background checks under Business and Professions Code Section 144 and to require disclosure of Social Security Numbers for all other applicants under Section 30 of the Business and Professions Code. Further, Section 901(b)(1)(B)(iii) requires a health-care practitioner to agree to comply with all applicable practice requirements set forth in Section 901 and the board's applicable regulations. This form, with its accompanying attestation provisions, would provide the mechanism to effectuate such an agreement.

Currently, the Dental Board of California requires applicants and licensees, for whom an electronic record of fingerprints does not exist, to provide fingerprints for a background check before issuance of a license. The protection of the public is the Board's highest priority when exercising its licensing, regulatory, and disciplinary functions. This proposal is consistent with the Board's priority of protecting the public.

M/S/C (Burton/Morrow) to accept staff's recommendation to reject this comment.

**Public comment:** Bill Lewis, California Dental Association (CDA), we defer to the Board's discretion on this item. CDA feels that it is a balancing act to maintain protection of the public while at the same time not putting up barriers that make it difficult to recruit personnel to staff these volunteer events. While CDA understands where staff's recommendation is coming from, they see these as temporary visits being overseen by a sponsoring entity that will also be registering with the Board giving some level of oversight in addition to verification that they are dually licensed in another state. CDA felt that additionally requiring a full background check with fingerprints would deter many individuals from volunteering.

Dr. Bettinger commented that they are not practicing alone at these events. They are surrounded by peers and the sponsoring entity staff. Dr. Bettinger stated that we have probationers working these events as part of their community service who would not pass a background check. He said that he thinks that there is very little risk when they are participating in these supervised public events and that it might hinder people from volunteering.

Ms. Shellans stated that her concern is that not all states require a background check for licensure and if we're going to allow them to come into our state and essentially practice dentistry without a license, they should at least meet the same standards as our licensees have to meet. That is the argument that other agencies and the Department have raised with respect to fingerprinting, that the playing field should be level and the public be protected at the same time.

Ms. Wallace stated that the other Healing Arts Boards within the Department are proposing regulations similar to this. She noted that the LiveScan requirement would only be for the first time a

participant volunteers. The records would be kept for future events. Dr. Le asked if we know which states require a fingerprinting/LiveScan for licensure. Ms. Shellans responded that a survey has not been done in a while but she knows that not all states require fingerprinting/LiveScan.

Dr. Morrow stated that LiveScans must be done in California so what do out-of-state dentists do in or to fulfill the LiveScan requirement? Ms. Shellans stated that they must send in a hard card which is converted into an electronic record. This process only has to be done once as the record is kept on file. The regulation does not require LiveScan; it requires an electronic fingerprint submission.

Dr. Casagrande asked who has the right to deny an out-of-state practitioner if something comes back from the fingerprinting. Ms. Shellans stated that it is at the discretion of the Board whether or not they make a denial, it is on a case by case basis and the applicant has the right to appeal. Expedited hearings are done for these appeal cases.

The motion passed with 11 ayes and 1 no.

### ***2. Comments Regarding Continuing Education Requirement:***

Both CDA and CALAOMS commented that the requirement for an out-of-state practitioner to provide documentation of 50 hours of continuing education within the previous two years of the date of the application seemed excessive, burdensome, and arbitrary. Most, if not all, states require continuing education as a condition of licensure, which is considered proof that the practitioner's license is valid and in good standing. The applicant's valid and current license, in good standing in another state, should be taken as sufficient evidence that the applicant maintains the continuing education necessary to provide competent dental care.

Staff recommended acceptance of this comment and recommended deleting the requirement for an out-of-state practitioner to provide proof of completion of 50 hours of continuing education within two years of the date of his or her application. Staff recognized that this requirement may be unnecessary and may cause an undue burden upon the out-of-state practitioner.

M/S/C (Dominicis/Olinger) to accept staff's recommendation. The motion passed unanimously.

### ***3. Comments Regarding Application Fee for Out-of-State Practitioners:***

Both CDA and CALAOMS commented that the proposed \$100 application fee was high and could serve as an impediment to participation. Both organizations recommended that the Board adopt an application fee of \$25, like that of the Medical Board of California.

Staff recommended acceptance of the comment that the fee should be lowered so as not to impede participation from out-of-state practitioners at sponsored events. When the regulations were initially drafted it was unknown how many sponsors of free healthcare events and how many volunteer out-of-state licensees may apply to the Board as a result of these regulations. Initially, the Board estimated that it would receive at least 250 applications per year from out-of-state dentists seeking authorization to provide services at sponsored health care events. In order for the Board to absorb the workload associated with processing the requests for authorization from the out-of-state dentists, the Board would have needed to charge a \$100 non-refundable processing fee to offset the costs associated with staff's processing of the application.

After further evaluation, staff believes that the estimated number of applications the Board would receive each year from out-of-state practitioners would be significantly lower. Staff now estimates that the Board would receive approximately 75 applications per year from out-of-state dentists seeking authorization to provide services at sponsored free health care events. To absorb the workload associated with processing 75 applications per year, the Board would need to charge a \$30 non-refundable processing fee per application. Staff recommends modifying the text accordingly.

M/S/C (Afriat/Morrow) to accept staff's recommendation. The motion passed unanimously.

**4. Comments Regarding Requirement to Provide Written Notice to Each Patient:**

At the regulatory hearing held on November 22, 2011, Mr. Fred Noteware, representing both CDA and CALAOMS, commented that the organizations were concerned with the provisions contained in 1023.19 regarding the written notice requirement for each patient. They felt that the separate notice before each treatment was burdensome and would be an impediment to efficient care. Both organizations commented that the notice should be part of the general waiver and consent and suggested that the names and states of each out-of-state dentist that may provide care could be added to the waiver and consent. Currently the waiver and consent informs the patient that they may be seen by student dentists or student hygienists working under the direct supervision of their instructors; patients are required to sign this waiver and acknowledgment. Mr. Noteware commented that it would be better to get the waiver signed by all potential patients in advance and not patient by patient at the time of service.

Staff recommended rejection of this comment. The notice is not considered a waiver. Providing written notification to each patient that the practitioner is licensed outside of the State of California does not relinquish or surrender the patient's privilege to health care services provided by the out-of-state practitioner. The out-of-state practitioner is only required to provide written notification to each patient, in at least 12-point font and include information regarding licensure, as specified, and a disclosure that the Dental Board of California has only authorized the practitioner to provide services at that particular health care event for a period not to exceed 10 days. The notice may be provided to the patient on a form of the practitioner's choosing. Statutory law makes no provision for notifying the affected public that out-of-state practitioners are not California licensed dentists in good standing. A member of the public would assume, unless this notice is provided, that dentists providing dental services in California would be duly licensed and regulated by the Dental Board. The protection of the public is the Board's highest priority when exercising its licensing, regulatory, and disciplinary functions. This proposal is consistent with the Board's priority of protecting the public. The requirement of written notification provides transparency to the public that individuals performing dentistry at the sponsored event are licensed in good standing by another state, district or territory, the license numbers, effective dates of each license and issuing agency, and the dates that the out-of-state practitioner is authorized to practice by the board. This proposed regulation further specifies a statement of disclosure that the Dental Board has only authorized the practitioner to provide services at the sponsored event and for a period not to exceed 10 days. This proposed section provides disclosure to the public that practitioners are licensed by another governmental agency, provides specific information regarding those licenses, and informs the public that practitioners may only practice pursuant to the specific provisions of Section 901.

M/S/C (Burton/Olinger) to accept staff's recommendation to reject the comment.

Dr. Olinger asked for clarification regarding whether or not the notice is considered a waiver. Ms. Shellans stated; for clarification, the notice is not a signed consent or waiver, it is simply a notice that provides the patient with the name, license number, state of practice and other pertinent contact information so that should complications arise, the patient is able to reconnect with the treatment provider.

**Public comment:**

Dr. Guy Acheson, Academy of General Dentistry, stated that simply handing out a piece of paper seems problematic as so many of the consumers at these events do not speak English so to have this piece of paper in English handed to them as they walk into an operatory won't have much meaning.

Ms. Shellans stated that the idea is that they have the information. If they want to they can take it to someone to translate it for them.

Bill Lewis, California Dental Association (CDA), stated that CDA felt that having only the out-of-state practitioners hand out a separate piece of paper creates a sort of stigma on them and might make recruitment harder by discouraging participation. Dr. Casagrande asked if CDA sponsored any of these events. Mr. Lewis responded that CDA is partnering with an organization called MOMS to sponsor events in Modesto in May and Sacramento in August. Dr. Casagrande asked who is liable if something goes wrong at one of these events the sponsor or the individual practitioner. Mr. Lewis stated that it is his understanding that both the individual and the sponsoring entity are responsible but he is not an expert on this issue. Dr. Le suggested having the event organizer post a sign at each station that clearly states the name of the dentist, the license number, and the state where the dentist is licensed. She commented that then there is no discrimination or singling out of any person because every practitioner would have a sign. Dr. Dominicis commented that when he participates in the events he must provide information regarding the status of his license along with a copy of his malpractice insurance. Dr. Dominicis further commented that at these events the Doctors move from station to station and don't really stay in the same place so Dr. Le's suggestion might not work.

A vote was taken on the motion. The motion carried with 11 ayes and 1 no.

#### **5. Summary of Comments Received from the California Academy of General Dentists and Staff Recommendations:**

At the regulatory hearing, Dr. Acheson, President-elect of the California Academy of General Dentistry, verbally presented a letter from the President of the California Academy of General Dentistry in support of the regulations. Dr. Acheson read the letter aloud and entered the letter into the rulemaking. Dr. Acheson stated that he had participated in events in other states in the past. He specifically pointed out that he had participated in an event at the Louisiana State University School of Dentistry where dental care was provided to underserved residents of New Orleans, LA. The event gathered more than 140 volunteers from around the country to provide care for over 180 patients from New Orleans. Additionally, Dr. Acheson stated that he had participated in an event at the San Diego Convention Center with approximately 30 other California licensed dentists to provide over \$80,000 in free dentistry work to about 125 veterans in San Diego, CA. He stated that these proposed regulations are important to authorize more volunteers from other states to assist with providing important dental care services at these health care events. The California Academy of General Dentistry wanted to clearly emphasize that the proposed regulations be limited to licensed dentists to volunteer their services in California. The organizations believe that for public health and safety reasons, non-traditional therapists should not be included in the regulations.

There was no staff recommendation as this was not considered an adverse comment and the Board's regulations are only applicable to licensed dentists.

Katie Dawson, California Dental Hygienists Association (CDHA) commented that a portion of CAGD's letter refers to "mid-level" providers which are not a recognized category in California. She stated that she is concerned that anyone not listed would not be included in the volunteer effort because she knows that dental hygienists are actively involved in these programs. Ms. Dawson stated that she thinks it would set a bad precedent to start excluding certain groups from the legislation.

#### **AGENDA ITEM 3(B): Discussion and Possible Action Regarding Adoption of Proposed Additions to Title 16, CCR, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events**

Ms. Wallace stated that the proposed modified text was included in the packet for the Board's review. Staff had made some technical changes as well as deleting the requirement for continuing education and changing the fee. Staff also added a couple of clarifying statements under section 1023.17. One statement was; *Authorization shall be obtained for each sponsored event in which the applicant seeks to participate.* Staff renamed the form and added in section 1023.17(a)2 regarding

fingerprinting, a specifying statement that says; *This requirement shall apply only to the first application for authorization that is submitted to the board by the applicant.* In section 1023.17(C), the Denial of Request for Authorization to Participate, staff added, as a condition of denial; 1(G) *The board has been unable to obtain a timely report of the results of the criminal history check.* Ms. Shellans stated that she had requested an addition be made to the definition of “out-of-state practitioner”, section 1023.15(b); the word *active* be added to the status of their license.

M/S/C (Morrow/Burton) to modify the text in response to the comments and recommendations received and direct staff to take all steps necessary to complete the rulemaking process, including preparing the modified text for a 15-day public comment period, which includes the amendments accepted by the board at this meeting. If after the 15-day public comment period, no adverse comments are received, authorize the Executive Officer to make any non-substantive changes to the proposed regulations before completing the rulemaking process, and adopt the proposed amendments to Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18 as noticed in the modified text relevant to Licensure Exemption for Out of State Licensed Practitioners to Provide Healthcare Services at Sponsored Free Health Care Events. The motion passed unanimously.

Ms. Wallace noted that staff is aware of the urgency in moving this rulemaking along and will notice the modified text for 15-day public comment period on March 2<sup>nd</sup>. Staff recommended that the Board hold a special teleconference meeting, if needed, to respond to any adverse comments that may be received during the modified text public comment period to expedite the adoption of these regulations.

**Committee Meetings commenced at 2:10 p.m.**

**The full Board reconvened at 5:25 p.m.**

#### **AGENDA ITEM 4: Subcommittee Update of Universidad De La Salle’s Renewal and Site Review**

Dr. Whitcher acknowledged Dr. McGrath from the Universidad De La Salle. Dr. Morrow reported that upon completion of the review by the subcommittee, the Universidad De La Salle’s application for renewal is complete. The school was notified and a site visit was scheduled for March 12-16, 2012. The onsite inspection and evaluation team was selected in accordance with Section 1024.6 of the California Code of Regulations. The site team members are: Dr. Timothy Martinez, Dr. Ernest Garcia, Dr. Nelson Artiga, Dr. Steven Morrow and Ms. Erica Cano.

A pre-site visit meeting of the subcommittee with the site team members and the Executive Officer was held on Friday, March 2, 2012 at the Dental Board office in Sacramento. The team developed a schedule for the site visit which was submitted to the Universidad De La Salle in advance.

Dr. McGrath commented that they have made all of the arrangements for travel and accommodations and are eagerly awaiting the arrival of the site team.

Dr. Le and Dr. Morrow thanked Dr. McGrath for providing them with the requested documentation and information.

Missy Johnson with the law firm of Nielsen-Merksamer, stated that she was at the meeting on behalf of Dr. McGrath-Bernal.

#### **AGENDA ITEM 5: Discussion and Possible Action Regarding a Response to the American Dental Association’s (ADA) Formal Request to Allow Out-of-State Licensed Dentists to Conduct Live-Patient Continuing Education Classes at the 2012 ADA Annual Session as Permitted by Business and Professions Code 1626(d)**

Mr. DeCuir, Executive Officer, reported that on January 10, 2012, the American Dental Association (ADA) formally requested that the Dental Board again allow out-of state licensed dentists to conduct live-patient continuing education classes at the 2012 ADA Annual Session under exemption (d) to Business and Professions Code 1626 which reads: *The practice of dentistry by licensed dentists of other states or countries in conducting or making a clinical demonstration before any bona fide dental or medical society, association, or convention; provided, however, the consent of the Dental Board of California to the making and conducting of the clinical demonstration shall be first had and obtained.* M/S/C (Casagrande/Morrow) to approve the ADA's request to allow out-of-state licensed dentists to conduct live-patient continuing education classes at the 2012 ADA Annual Session. The motion passed unanimously.

Relating to the second Board action requested by staff, Ms. Shellans, legal counsel, commented that in order to delegate authority to the Executive Officer for future requests related to Business and Professions Code Section 1626(d), the Board would need to initiate a rulemaking to add this delegation authority to the duties of the Executive Officer outlined in CCR, Section 1001. This item would need to be put on the agenda for a future meeting.

**Public Comment for Items Not on the Agenda**

There was no additional public comment.

The meeting recessed at 5:38 p.m. and will resume at 8:00 a.m. on Friday, February 24, 2012.