

**DENTAL BOARD OF CALIFORNIA**

2005 Evergreen Street, Suite 1550, Sacramento, California 95815

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**Teleconference Meeting of the Dental Board of California  
Meeting Minutes  
Wednesday, April 11, 2012**

**Members Present:**

Bruce Witcher, DDS, President  
Huong Le, DDS, Vice President  
Fran Burton, Public Member, 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

**Staff Present:**

Richard DeCuir, Executive Officer  
Denise Johnson, Assistant Executive Officer  
Kim Trefry, Enforcement Chief  
Nancy Butler, Supervising Investigator  
Jocelyn Campos, Enforcement Coordinator  
Adrienne Mueller, Enforcement Coordinator  
Sarah Wallace, Legislative and Regulatory Analyst  
Linda Byers, Executive Assistant  
Kristy Shellans, Legal Counsel  
Spencer Walker, Legal Counsel

**TELECONFERENCE LOCATIONS WITH PUBLIC ACCESS:**

**Dental Board of California Offices:**

2005 Evergreen Street, Suite 1550, Sacramento, CA 95815  
333 S. Anita Drive, Suite 930, Orange, CA 92780

**Other Locations:**

555 Ralph Appezato Parkway, Building A, Rm 209, Alameda, CA 94501  
4107 Magnolia Blvd., Burbank, CA 91505  
8202 Florence Avenue, Suite 101, Downey, CA 90240  
8375 University Avenue, La Mesa, CA 91941  
1428 Oak Street, Paso Robles, CA 92446

1304 15th Street, Suite 100, Santa Monica, CA 90404

President Bruce Witcher, DDS called the meeting to order at 12:10 pm. Secretary Fran Burton called the roll and established a quorum.

**AGENDA ITEM 1(A) Discussion and Possible Action Regarding Consideration of Delegation to the Department of Consumer Affairs the Authority to Receive Sponsoring Entity Registration Forms and to Register Sponsoring Entities for Sponsored Free Health Care Events that Utilize the Services of Dentists**

Ms. Sarah Wallace reported that at its February 23, 2012 meeting, the Dental Board of California (Board) considered comments received during the 45-day public comment period. The Board voted to modify the text in response to the comments, and directed staff to notice the modified text for 15-day public comment.

Prior to staff noticing the Board's modified text for 15-day public comment, the Department of Consumer Affairs (DCA) contacted all healing arts boards that have proposed regulations relevant to sponsored free health care events, advising that boards may need to further clarify DCA's role in receiving and registering sponsoring entities. The Medical Board of California (MBC), Board of Occupational Therapy (BOT), and the Board of Vocational Nursing and Psychiatric Technicians (BVNPT) had all submitted their final rulemaking files to the Office of Administrative Law (OAL). On March 13, 2012, OAL issued a Decision of Disapproval of MBC's proposed regulations due to failure to comply with clarity and necessity standards, as well as procedural issues.

OAL's primary clarity concern related to the specific content of MBC's Form 901-A in relation to the content of similar forms proposed by other healing arts boards within the DCA. The BVNPT and BOT used similar forms incorporated by reference, and each form contained language similar to MBC's form indicating that only one registration form per event should be completed and submitted to the DCA. The Office of Administrative Law was concerned that there was not one common form with a uniform set of regulatory requirements which would, with certainty, allow for the filing of a "single, common form" that meets the regulatory requirements of the three agencies. OAL could not easily understand how the "only one form per event" provision on each of the individual board's forms would work in practice. The differing forms from each board could create the potential for confusion and uncertainty among sponsoring entities legally required to comply with the regulations.

Ms. Wallace stated that she worked with legal counsel to develop modifications to the text and incorporate a new form that has been approved by the DCA.

Staff recommended the Board adopt the Resolution to formally delegate authority to the DCA to receive sponsored entity registration forms and to register sponsoring entities for sponsored free health care events that utilize the services of dentists and to direct staff to add the adopted Resolution to the Board's Sponsored Fee Health Care Events rulemaking file.

M/S/C (Morrow/Afriat) to adopt the Resolution after amending it by moving the 4<sup>th</sup> "Whereas" to number 2.

Mr. Afriat asked by delegating this authority do they indemnify the state against liabilities or do we inherit liability. Kristy Shellans, legal counsel responded that we are part of the DCA and they are just acting as an arm of the Board in processing these applications of non-profit entities.

Dr. Le asked how communication would be achieved between the DCA and the Board regarding the out-of-state practitioners. Ms. Shellans stated that they would process the forms according to the time frames set forth in the Dental board's regulations and then forward the applications to the Board for inclusion in their database. She stated that the timeframes allow ample time for processing.

Ms. Burton stated that she has a concern about an event that encompasses multiple practitioners. She requested that the Board make a change to the Resolution by moving the 4<sup>th</sup> "Whereas" up to number two. Legal Counsel agreed.

Dr. Casagrande asked who has enforcement authority if a complaint is filed against one of the health care providers. Ms. Shellans stated that the Board still has to approve the provider. The Board retains the ability to terminate the approval of the provider and notify the entity who licenses the provider if they are from out of state.

Ms. Shellans stated that this item is only dealing with the sponsoring entity itself not the health care providers themselves.

Dr. Casagrande asked if we will deal with any misconduct by healthcare providers at these events the same way we deal with the providers we receive complaints against.

Spencer Walker, Legal Counsel, answered that the Board will have limited jurisdiction and will not be able to take action against the practitioner. It would be a civil issue between the patient and the out-of-state practitioner. The only thing the Board could do would be to rescind the authorization.

There was no public comment.

The motion passed unanimously.

**AGENDA ITEM 1(B) Adoption of Proposed Amendments to Cal. Code of Regs., Title 16, Sections 1023.15, 1023.16, 1023.17, and 1023.18 Relevant to Licensure Exemption for Out of State Licensed Dentists to Provide Health Care Services at Sponsored Free Health Care Events.**

Ms. Wallace stated that now that the Board has chosen to delegate authority to the DCA, staff requests that the Board modify the text in response to staff's recommendations 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 the 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, 1023.18, and 1023.19 relevant to licensure exemption for out of state licensed dentists to provide health care services at sponsored free health care events as noticed in the modified text.

M/S/C (McCormick/Olinger) to accept the modified text 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 the 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, 1023.18, and 1023.19 relevant to licensure exemption for out of state licensed dentists to provide health care services at sponsored free health care events as noticed in the modified text.

Dr. Morrow asked to clarify a small inconsistency in the use of the word “certificate” in Section 1023.15 (b) and on the Form “Request for Authorization to Practice without a License at a Registered Free Health Care Event” Part 1, second bullet point. Ms. Wallace stated that the word “certificate” should be struck in both of those places.

Dr. Le suggested that in Section 1023.16, the word “board” be replaced with “the Department of Consumer Affairs”.

Ms. Wallace and Ms. Shellans suggested adding “or it’s delegatee” after the word “board” as the delegation language does not appear until subdivision (b).

The motion was modified to add; striking all references to “certificate” in Section 1023.15(b) and adding the words “or its delegatee” after “A sponsoring entity shall register with the board...” in Section 1023.16.

There was no public comment.

The motion passed unanimously.

The Board immediately went into Closed Session. Dr. Bettinger recused himself from Closed Session and hung up the phone.

#### **\*CLOSED SESSION - FULL BOARD**

The Board met in Closed Session to Deliberate and Take Action on Disciplinary Matters

#### **RETURN TO OPEN SESSION**

The Board returned to open session at 2:55 p.m.

Dr. Bettinger called back in to the teleconference.

There was no public comment.

The meeting adjourned at 3:00 p.m.